SUPREME COURT RECORDS & BRIEFS
1932 FULL OPINIONS

CITATION		TITLES	CASE#
287 U.S.	1	WOOD v. BROOM	424
	9	STEWART DRY GOODS CO. v. LEWIS	27
	27	N.Y. CENTRAL SECURITIES CO. v. U.S.	5
	29	MOSHER v. PHOENIX	6 & 7
	32	GULF STATES STEEL CO. v. U. S.	24
	45	POWELL v. ALABAMA	98,99,100
	77	U.S. SHEVEPORT GRAIN & ELV. CO.	19
	86	SEABOARD AIR LINE RY. v. WATSON	4
	92	SCHOENTHAL v. IRVING TRUST CO.	14
	97	WASHINGTON FID. INS. CO. v. BURTON	22
	103	BURNET v. HARMEL	26
	112	GEBARDI v. U.S.	97
	124	GRACE v. UNITED STATES	43
	129	U.S. v. CORSI	10
	134	NORFOLK & WESTERN RY. CO. v. U.S.	18
	144	U.S. v. GREAT NORTHERN RY.	96
	156	AMERICAN SURETY CO. v. BALDWIN	3
	170	BROOKLYN EASTERN TERMINAL v. U.S.	39
	178	I.C.C. v. N.Y., N.H. & H.R. CO.	15
	206	SGRO v. U.S.	55
	216	BURNS v. U.S.	378
	224	GWINN v. COMM.	31
	229	ALTON R. CO. v. U.S.	81
	241	EX-PARTE U.S.	19
	251	STEPHENSON v. BINFORD	326

SUPREME COURT RECORDS & BRIEFS
1932 FULL OPINIONS

CITATION	TITLES	CASE#
287 U.S.		
278	BAINBRIDGE V. MERCH. & MINERS CO.	90
283	ADVANCE-RIEMLEY CO. V. JACKSON	33
291	SUN OIL CO. V. DALZELL TOWING CO.	38
295	DETROIT BRIDGE CO. V. TAX BOARD	51
299	MURPHY OIL CO. V. BURNET	80
308	BANKERS COAL CO. V. BURNET	104
314	STROTHER V. BURNET, COMM. OF INT. REVENUE	105
315	REICHELDERFER V. QUINN	9
324	ELTING V. NORTH GERMAN LLOYD	42
329	LLOYD SABAUDO SOCIETO V. ELTING	48
341	COSTANZO V. TILLINGHOST	110
346	PORTER V. INVESTORS SYNDICATE	627
348	SHAPIRO V. WILGUS	40
358	ST. NORTHERN RY. V. SUNBURST CO.	53
367	CORTES V. BALTIMORE INSULAR LINES	12
378	STERLING V. CONSTONTIN	11-453
404	DALTON V. BOWERS	52
410	BURNET V. CLARK	180
415	BURNET V. COMMONWEALTH IMP. CO.	95
420	EARLE & STODDARD V. WILSON LINE	20
430	GENERAL ELECTRIC CO. V. MARVEL CO.	57
435	SORRELLS V. U.S.	177
459	JOHNSON V. HIGGINS V. U.S.	166
462	PINELLAS ICE CO. V. COMMISSIONER	182

SUPREME COURT RECORDS & BRIEFS
1932 FULL OPINIONS

CITATION		TITLES	CASE#
287 U.S.			
	470	UNITED STATES v. ARZNER	191
	474	FAIRMOUNT GLASS WORKS v. COAL CO.	314
	488	WABASH VALLEY ELECTRIC CO. v. YOUNG	128
	502	ATLANTIC COAST LINE v. FORD	194
	509	GUARANTY TRUST CO. v. BLODGETT	217
	513	AMERICAN SURETY CO. v. MAROTTA	131
	518	POBREDO v. BOYD CO.	171
	527	JOHNSON v. STAR	282
	530	AETNA LIFE INS. CO. v. MOSES	137
	544	BURNET v. ALUMINUM GOODS CO.	192
	551	PALMER v. BENDER	215

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 98

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, AND OLEN MONTGOMERY, PETITIONERS,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 23, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,795)

(   )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, AND OLEN MONTGOMERY, PETITIONERS,

vs.

STATE OF ALABAMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX

	Original	Print
Record from circuit court of Jackson County	1	1
Caption (omitted in printing)	1	
Indictment	1	1
Writ of arrest	2	2
Judgment entry	2	2
Bill of exceptions	3	4
Caption	3	4
Petition for change of venue	3	4
Exhibit "A"—Excerpt from newspaper	4	5
Exhibit "B"—Excerpts from newspapers	8	10
Testimony of M. L. Wann	16	18
Testimony of Joe Starnes	17	19
Order overruling petition for change of venue	18	21
Testimony of Victoria Price	19	22
Ruby Bates	23	26
Dr. R. R. Bridges	24	28
Tom T. Rousseau	26	30

Judd & Detweiler (Inc.), Printers, Washington, D. C., May 14, 1932

INDEX.

	Original	Print
Testimony of T. M. Latham	27	31
T. L. Dobbins	27	31
See Adams	28	32
Ozie Powell	29	33
Willie Roberson	31	36
Andy Wright	33	37
Olen Montgomery	34	39
Eugene Williams	35	40
Victoria Price (recalled)	37	42
Willie Roberson (recalled)	38	43
C. M. Latham (recalled)	38	44
Tom T. Rousseau (recalled)	38	44
Mr. Brannon	39	45
Mr. Keel	40	46
Mr. Gilley	41	47
Charge to jury	42	48
Motion for new trial	46	53
Amended motion for new trial	47	54
Exhibit No. 1—Proceedings and testimony preliminary to trial of Norris and Weems	49	57
Petition of Claude Patterson et al	66	75
Affidavit of Haywood Patterson et al. in support of motion for new trial	70	80
Exhibit No. 1—Excerpts from record in Weems and Norris case	77	87
Affidavit of Roberta Fearn	90	102
Bertha Lowe	91	103
Willie Crutcher	91	104
Allen Crutcher	92	105
Georgia Haley et al	93	106
Percy Ricks	94	107
Second amended motion for new trial	96	109
Affidavit of Stephen R. Roddy	103	117
Testimony of T. G. Elkins	104	118
G. W. Sartin	106	120
L. R. Jones	107	122
J. M. Barnes	108	122
Willie J. Wells	108	123
Richard Hill	109	124
Roy Kilbourne	109	124
W. C. Scogin	110	125
B. M. Holloway	111	127
C. C. Allen	112	128
Lee Hicks	113	129
Outher Ballard	114	129
John Venson	114	130
Affidavit of T. B. Reynolds et al	116	132
L. L. Maynor	117	133
P. W. Campbell	118	134
Order overruling motion for new trial	120	137

	Original	Print
Order settling bill of exceptions	120	137
Certificate of appeal	121	137
Proceedings in supreme court of Alabama	122	138
Order granting writ of certiorari	122	138
Writ of certiorari	123	138
Return to writ of certiorari	124	139
Argument and submission	128	143
Judgment	129	144
Opinion, Knight, J	131	145
Dissenting opinion, Anderson, J	165	171
Petition for rehearing	170	175
Order overruling petition for rehearing	176	179
Petition for stay of execution	176½	180
Order staying execution	181	184
Præcipe for transcript of record	183	185
Clerk's certificate (omitted in printing)	184	
Order allowing certiorari		187

[fols. a-1]

[Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

The State of Alabama

vs.

Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, and Eugene Williams

Indictment—Filed March 31, 1931

The State of Alabama,
Jackson County:

Circuit Court, Special March Term, 1931

The Grand Jury of said County charge that before the finding of this indictment Haywood Patterson, E-ge-e Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarency Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.
H. G. Bailey, Solicitor for Ninth Judicial Circuit.

No. 2402. State of Alabama, Jackson County. The State vs. Haywood Patterson et al. Indictment: Rape. No Prosecutor. Witnesses: Ruby Bates, Victoria Price, Orvall Gilley, Dr. R. R. Bridges, Dr. Linch, C. M. Latham, C. S. Broadway, C. F. Simmons, Tom Taylor Rousseau, Jim [fol. 2] Broadway. A true bill. J. N. Ragsdale, Foreman Grand Jury.

[File endorsement omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT

No. 2402

WRIT OF ARREST

To any sheriff of the State of Alabama, Greeting:

An indictment having been found against Haywood Patterson et als at the Special term, 1931 of the Circuit Court of Jackson County for the offense of Rape. You are therefore commanded forthwith to arrest the said Haywood Patterson et als and commit them to jail, unless they give bail to answer such indictment at the said Curcuit Court of Jackson County in the sum of — Dollars.

Witness my hand this 31 day of Mar., 1931.

C. A. Wann, Clerk.

Executed by arresting the within named Defendants and Jail.

3-31-3.

M. L. Wann, Sheriff.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE

vs.

HAYWOOD PATTERSON et als.

JUDGMENT ENTRY

April 8th, 1931.—Comes H. G. Bailey who prosecutes for the State of Alabama in this behalf and came also the defendants, Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery in their own proper person and by their attorneys of record and the said defendants demanded a severance in this case, and the same was granted by the Court, the said defendants did also file motion for change in venue to which the court overruled and the defendants did except to the ruling of the Court; The said defendants being now in open Court were duly arraigned and having the indictment read over to them and each individually for his plea thereto said that he was not guilty;

Issues being joined, there came a jury of good and lawful men to wit, Lem R. Jones and eleven others, who being empannelled and sworn, according to law, upon their oaths do say: "We the jury find the defendants guilty of rape as charged in the indictment and fix their punishment at death.

(Signed) Lem R. Jones, Foreman.

April 9, 1931.—The said defendants, the said Eugene [fol. 3] Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery being now in open Court and being asked by the Court if they had anything to say why the sentence of the law should not now be pronounced upon them and the said defendants and each of them says nothing. It is therefore considered by the Court and it is the judgment of the Court and the sentence of the law that the said defendants the said Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery be sentenced to death by electrocution at Kilby Prison in the City of Montgomery, Montgomery County, Alabama, on Friday the 1st day of July, 1931.

April 18, 1931, the Clerk of this Court did write death warrants for the said Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery and the same directed to the warden of Kilby prison commanding him to fail not in executing the said sentence and make his return as to how and when he executed the same.

Defendants appeal to Supreme Court and sentence suspended pending said appeal.

IN CIRCUIT COURT OF JACKSON COUNTY

THE STATE OF ALABAMA

vs.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, and EUGENE WILLIAMS

Bill of Exceptions—Filed Nov. 30, 1931

CAPTION

Be it remembered that upon the trial of the foregoing styled cause, in the Circuit Court of the Ninth Judicial Circuit of Alabama, beginning on, to-wit: the 8th day of April, 1931, present and presiding the Honorable A. E. Hawkins, Judge of said Court, the following proceedings not otherwise appearing of record, were has, to-wit:

On the 6th day of April, 1931, the defendants Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams filed in said cause their petition for a change of venue, said petition being also signed by other defendants, and a severance as to the defendants in this cause, to-wit: Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, was granted upon motion of the State.

Said petition for change of venue is in words and figures as follows, to-wit:

PETITION FOR CHANGE OF VENUE

To the Hon. A. E. Hawkins, Judge of the 9th Judicial Circuit Court:

Your petitioners, the undersigned, who are defendants in a cause now pending in said court, charged with the offense of rape, respectfully represents that they nor either of them can have a fair and impartial trial in this county; that [fol. 4] the newspapers published in this county have so persistently tried the cause asserting the guilt of the defendants in such terms of these defendants, as to inflame the public mind to the extent that the Sheriff of said county had the Governor of this state to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflam-atory statements contained in said newspapers which are circulated all over this county, the minds of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publications are hereto attached marked Exhibit "A" and "B" and made part of this petition. That the public generally have already convicted them. Wherefore, petitioners prays your Honor to make an order removing this trial to some other county and the defendants hereby make oath that all the foregoing statements are true.

Ozie (his X mark) Powell. Haywood (his X mark) Patterson. Eugene (his X mark) Williams. Charlie (his X mark) Weems. Roy (his X mark) Wright. Willie (his X mark) Roberson. Andy (his X mark) Wright. Olen (his X mark) Montgomery. Clarence (his X mark) Norris.

Sworn to and subscribed before me this 6 day of April, 1931.

C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

Said Exhibit "A", attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "A"

Jackson County Sentinel

Scottsboro, Ala., March 26, 1931.

[fol. 5]

Nine negro men rape two white girls, charge.

Threw white boys from freight train and held white girls prisoners until captured by posse.

All negroes positively identified by girls and one white boy who was held prisoner with pistol and knives while nine black fiends committed revolting crime.

National Guard called here and escorts prisoners to Gadsden for safe keeping until Tuesday.

Two girls and seven white boys were attacked by negroes as freight train left Stevenson; girls' home Huntsville.

Case has no parallel in crime history. Assault took place in mid afternoon as freight train sped through this county.

Special term of Grand Jury and court called for next Monday and April 6th.

This afternoon (Thursday) eleven National Guard officers and seventy Guardsmen are on their way to Gadsden, Alabama, escorting nine negro men to the jail at that city for safe keeping. Every one of the nine blacks is charged with raping one or both of the two white girls they held prisoner on a fast through freight train as it was passing through Jackson County Wednesday afternoon between noon and three o'clock after they had attacked and thrown from the train six white boys and held one white boy a prisoner with pistol and knives.

The negroes have all been positively identified by the two girls and all of the white boys, all of whom are now in Scottsboro to await the convening of the Jackson County grand jury called for special term next Monday, March 30th, to investigate the case.

The girls were Victoria Price and Ruby Bates, who gave their ages as 17 and 19 years, and gave Huntsville as their home. They stated that they had been in Chattanooga looking for work and were broke and decided to hobo back home with the white boy companions. Both girls were garbed in overalls.

The names of the white boys were John Gleason, John Ferguson, Roy Thurman, Lindsay and Odell Gladwell, Lester Carter and Orville Gilley.

All of these white men gave addresses in other states except Gilley, who stated his home was at Albertfille in Marshall County. Gilley was the one held prisoner by the negroes and is an eye witness to every assault. The negroes, as hard looking lot as ever marched into jail [fol. 6] here gave their names as Ozey Powell, Chas. Weems, Clarence Morris of Atlanta, Olen Montgomery of Monroe, Ga., and Roy and Andy Wright, Eugene Williams, Haywood Patterson of Chattanooga, and Willie Roberson of Columbus, Ga. These last four named negroes were identified by Chattanooga police as being "the worst young negroes in Chattanooga" and all of them have police records in that city.

Negroes Accuse Each Other

This morning one of the younger negroes was taken out by himself and he confessed to the whole matter but said "the others did it." He was taken back to point out the guilty ones and the negroes immediately began accusing each other of the crime.

Surprise Attack Overpowered Whites

According to the general story told by both the girls and white boys, the two girls and seven white boys were in a gondola car (or coal car) which had about two feet of gravel in the bottom of it. They were beating their way to Huntsville from Chattanooga. When the fast freight pulled away from the coal chute west of Stevenson, the nine negroes and maybe one or two more jumped down in the car and attacked them, the negroes showing a pistol and knives. Several of the smaller white boys were bodily thrown over the gondola sides and the fight was soon left to only three or four white men and they fought until one by one of the black brutes overpowered them and threw them over the side of the car.

One white boy, Orville Gilley, was struck over the head with a pistol and left in the corner for dead, but he roused up and found a knife held at his throat by two negroes who told him they intended to kill him. While some of the negroes held the two white girls others of the fiends raped them, holding knives at their throats and beating them when they struggled.

Splendid Capture by Deputy and Posse

The first white boy thrown from the train struggled his way back to Stevenson and gave the alarm but the freight had already passed Scottsboro and word was flashed to Paint Rock, where Deputy Sheriff Latham, of Trenton, who happened to be in Paint Rock, quickly formed a big posse of heavily armed citizens and they lined up on both sides of the railroad and stopped the train and got every negro brute as he dropped from the cars.

The white girls were found in the car in a terrible condition mentally and physically after their unspeakable experience at the hands of the black brutes. They were hurried to Scottsboro and given medical attention.

The negroes were lined up at Paint Rock and Sheriff [fol. 7] Wann and the posse brought all nine of them to Scottsboro where they were identified by two girls and all of the white boys.

A great crowd gathered at the jail and it was thought that the prisoners were being carried to Huntsville for safe keeping, but the Sheriff changed his mind. Mayor Snodgrass and other local leaders addressed the threatening crowd and pled for peace and to let the law take its course and after an hour or two the crowd dispersed and all was quiet.

As a precautionary measure Governor Miller had been asked to send troops to Scottsboro and Major Joe Starnes of Guntersville, with ten other officers, commanding Alabama National Guard Companies E, F, G, arrived here within less than three hours' notice from the time his men were called, establishing a splendid record for the Guard as to ability to "get there when called." However, all was quiet, the soldiers relieving the sheriff and many of his deputies who had been on watch throughout the night. Today it was decided to send the negroes to Gadsden and the Nation- Guard will escort them to that city, also escort them back to Scottsboro for arraignment and trial.

Some of the white boys thrown from the train were badly beaten up and bruised and were given attention by local doctors.

Case Without Parallel in Country

This crime, the news of which was flashed around the whole county as a "first" Associated Press story, stands without parallel in crime history. Nine Negroes charged with rape, all of them being seen by three white eye-witnesses in open daylight, and this heinous attack following an assault and attempt to murder on the seven white boys who tried to protect the girls.

Calm thinking citizens last night realized that while this was the most attrocious crime charged in our county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process. The citizens and officers are also commending the citizens of Paint Rock for their splendid and courageous stand in helping uphold the law at a most trying time.

Special Term of Court Called for April 6th

Circuit Judge Alf E. Hawkins and Solicitor Bailey arrived in Scottsboro Thursday morning and immediately went into conference regarding a special term of the grand jury and circuit court. The grand jury was summoned to reconvene next Monday, March 30th, and the Circuit Court, [fol. 8] to reconvene the Monday following. April 6th, County Court has been postponed to the first Monday in May.

All members of the present grand jury are given notice to please be at the court house next Monday morning, the convening of the jury at about 10 o'clock.

This jury consists of J. N. Ragsdale, foreman, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, Walter Berry.

According to legal procedure in a case of this grave nature it is necessary to allow certain time to elapse for legal procedure between the indictment and trial. Many citizens had hoped to get a speedier trial even than this date set, but under the law it is properly set and we feel sure that Jackson County people will accept this verdict and be a part in keeping peace in this time when it is hard to be lawabiding. Judge Hawkins and Solicitor Bailey have secured Judge Speake and Solicitor Pride of Madison County to hold their court at Guntersville week after next in order that they might give this early trial to these negroes.

Said Exhibit "B," attached to said petition, is in words and figures as follows, to-wit:

Exhibit "B"

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Negroes Indicted on Charges of Rape

Grand jury finds 20 indictments against blacks charged with rape of two white girls on train.

Negroes plead not guilty to most serious charges in legal history of the country.

Trial set for next Monday at Scottsboro; 100 jurors summoned to try case; troops form constant guard to alleged rapists.

Surrounded by a cordon of soldiers bristling with automatic rifles, pistols and riot guns, nine negro men stood up in the Jackson County court house last Tuesday morning and were indicted on the most serious charges known on the statute books of Alabama, rape. The negroes were Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, all of whom pled not guilty to the charges of having raped Victoria Price and Ruby Bates, two white girls.

[fol. 9] Twenty Indictments Against Negroes

The Jackson County Grand Jury went into session last Monday Morning investigating the case and Tuesday morning reported twenty indictments for rape against the nine negroes. There were nine individual indictments against the negroes for the alleged rape of Victoria Price, nine against them for the alleged rape of Ruby Bates, and two indictments against the whole nine negroes collectively for the alleged rape of both Victoria Price and Ruby Bates. This place- three indictments against each negro for the alleged crime of Wednesday of last week when it is said these negroes attacked the two white girls after overpowering or throwing from a moving freight train seven white boys who were in the same car with the two white girls.

The grand jury, under the direction of Solicitor Bailey, and County Solicitor Thompson, called before it a number of witnesses, including the two girls, Victoria Price and Ruby Bates, whose homes are in Huntsville, the boys who were with them and thrown from the train, the boy who was held prisoner and alleged to have witnessed the entire assault, the doctors, several officers and others who had information on the case.

No Disorder at Arraignment

The negroes were brought to Scottsboro from the Gadsden jail where they had been carried Thursday of last week.

They had an escort and guard to and in Scottsboro of Sheriff Wann and deputies and Major Joe Starnes of Guntersville in command of 25 picked soldiers from the Alabama National Guard. These soldiers were armed with automatic rifles, riot guns and pistols and kept order in the court room and kept "crowding" at a minimum. A great crowd of people was present or tried to get into the court room. However, the general temper of the public seems to be that the negroes will be given a fair and lawful trial in the courts and that the ends of justice can be met best in this manner, although the*se* case charged against the negroes appears to be the most revolting in the criminal records of our state, and certainly of our county.

Defense Lawyers Appointed

A Chattanooga lawyer, a Mr. Broddy, was at the court Tuesday he said, "to investigate the case of the negroes for interested parties in Chattanooga, but said he at that time had not been employed as counsel to defend them at the trial. Judge Hawkins appointed the entire Scottsboro bar not otherwise excluded from the case, to act as temporary [fol. 10] attorneys for negroes or active counsel for them if it appeared they would have no other counsel. Mr. Broddy also agreed to be listed as a temporary attorney for the defense. So at this time it is not known positively just who will defend the negroes and there may be outside legal talent from several places. It is understood that the Scottsboro law firm of Proctor and Snodgrass has been retained to assist in the prosecution of the negroes.

Trial Set for Next Monday

The trial of the negroes is set for next Monday, April 6th, in the special term of Jackson County Circuit Court. Judge Hawkins has drawn 100 regular and special jurors to appear for service. The list of jurors appears on this page of the Sentinel.

We are informed the State will make effort to try all the negroes at the same time under one indictment. If this is accomplished the matter will be made brief. If it becomes necessary to try each defendant separately it will take hundreds of jurors and many days court time.

100 Guards here next Monday. Major Starnes will command picked Troops at trial next Monday.

Major Joe Starnes of the Alabama National Guard stated to the Sentinel Monday that he expected to bring at least one hundred picked men for escort and guard duty to Scottsboro on next Monday when the nine negroes charged with rape on two white girls are brought here from Gadsden to be tried in the Jackson County Circuit Court.

The units coming here will be from Guntersville, Albertville and Gadsden and will be officered by about eleven men. These troops will remain here during the duration of the trial at least.

Major Starnes and his men made a record answer to the emergency call that was sent to them last Wednesday night by the Governor of Alabama, arriving in full military equipment at the Scottsboro jail in less than three hours from the time the Major got orders to come to Scottsboro. It was in the night and his men had to be notified at their homes in many parts of Marshall and Etowah counties.

Jurors Drawn for Special Term of Court

The following is a list of regular jurors drawn to appear next Monday morning for service at the special term of the Jackson Circuit Court which will try the nine negroes in-
[fol. 11] dicted for rape:

A. H. Hill, Bridgeport, Lem. R. Jones, Bridgeport, Geo. R. Joyner, Bridgeport, J. M. Barnes, Bridgeport, Luther Hart, Bridgeport, Lm. M. White, Bridgeport, W. C. Lindsay, Stevenson, Luther Ballard, Stevenson, John St. Clair, Stevenson, John N. Coffey, Stevenson, Virgil Knight, Stevenson, Horace McCrary, Stevenson, A. L. Akins, Stevenson, G. C. Reeves, Bryant, James Walker, Fackler, Clay Shrader, Fackler, Albert Rash, Bash, James D. Allen, Rash, Lee Hicks, Olalee, Ed Matthews, Ollalee, Arthur Gamble, Olalee, C. C. Allen, Olallee, A. L. Starkey, Hollywood, Wade S. Rowe, Pishgah, Will G. Sartin, Pishgah, Griff Callahan, Langston, Chas. Utter, Langston, T. Gaines Elkins, Tupelo, Steve J. Mitchell, Tupelo, Perry B. Hall, Larkinsville, J. B. Selby, Larkinsville, Pleas Kennamer, Woodville, Wm. Bishop, Woodville, P. W. Page, Woodville, Roy Wilbourn, Trenton, Richard Hill, Collins, Chas. Grady Swaim, Collins, Tom Austell, Collins, John W. Butler, Bishop, P. R. Sanders, Kyles Spring, O. C. Proctor, Scottsboro, Wm. McCutchen, Scottsboro, Tom W. Flowers, Scottsboro, L. D. Dean, Scottsboro, J. Exum Sumner, Scottsboro, John L. Staples, Scottsboro, J. W. Austell, Scottsboro, J. H. Harris, Section, J. A. Galloway, Section, McKinley Gilbreath, Section, J. A. Staten, Section, Granville Carter, Section, Luther B. Whitten, Section, J. A. McFarlin, Garth, J. A. Houk, Garth, J. G. Enochs, Hollytree, W. C. Scroggins, Dutton, Fred Morris, Dutton, Robert Hope, Dutton, Tom J. Dean, Dutton, Sam Dobbs, Dutton, T. M. Holloway, Dutton, Joe M. Kennamer, Gross Spring, Albert Britt, Haigwood, R. D. Bryant, Haigwood, John D. Culpepper, Haigwood, W. G. Isbell, Limrock, W. B. Clark, Princeton, J. F. Wilkins, Wininger, M. P. Adams, Rosalee, Alfred James, Deans, M. H. Moore, Deans, Eli L. Brown, Deans, J. E. Creswell, Deans, B. M. Bradley, Deans.

Special Jurors

The following is a list of 25 special jurors drawn to supplement *to* regular list above of 75. According to law only 100 jurors can be summoned at one time and if more are needed during progress of Court the judge is empowered to draw them as needed. The following jurors also report next Monday morning:

Wm. E. Moore, Pisgah, Mose Dawson, Scottsboro, John Strawn, Section, Joe L. Outlaw, Section, Marion Johnson, Limrock, Lee Golden, Princeton, W. Gordon Harris, Hollywood, John L. Blevins, Stevenson, Wm. E. Glover, Limrock, Tom Shepard, Swaim, Willie J. Wells, Paint Rock, John N. Hatchett, Swaim, Geo. O. Cook, Paint Rock, Hub. F. Everett, Paint Rock, Avery Steele, Olalee, J. Walter Clunn, [fol. 12] Princeton, John Golden, Princeton, Tom Arnold, Pisgah, John W. Sumner, Scottsboro, Albert Hoga, Tupelo, Charles S. Sewell, Flat Rock, Lee Sahby, Maxwell, Joe A. Ross, Woodville, Geo. R. Allison, Stevenson, Jesse C. Smith, Section.

Jaskson County Sentinel

Scottsboro, Ala., April 2, 1931.

Alleged Negro Attackers and Their Victims

(Picture Appearing in Newspaper)

[fol. 13] Jackson County Sentinel

(Editorial)

Scottsboro, Ala., April 3, 1931.

The Case of the Negroes

The editor of the Sentinel is informed that the attorneys for the nine negroes being held for rape of two white girls on a train in Jackson County, last Thursday will petition for a "change of venue" under the claim that newspaper stories and other propaganda have made it impossible to get a fair and unprejudiced trial in Jackson County for the negroes. This claim is without foundation at all. The citizenship of Jackson County just wants one thing—justice. They would want the same thing for white men charged with this offense just the same as they want it for the blacks. Under most trying circumstances our citizenship has acted fairly and, we believe, most wisely. If these negroes are guilty of the heinous crime of which they are charged they should get the severest penalty of the law, is our honest opinion. If they are not guilty, they are the most mistreated so far as charges are concerned, of any men ever arrested in this county. None of the parties, either negroes or white, are residents of Jackson County. Jackson County certainly gets no pleasure out of the matter. But in justice to the Sentinel and the article it printed last week regarding the affair, we tried very hard to temper the story down to keep from inciting the people rather than to do so. There was testimony of the two girls that was entirely too revolting to go in any paper or even be made public property. If these stories are true, these nine negroes are all guilty and should pay. The negroes have offered nothing to refute these charges except their mumbled "not guilty" answers in the court Tuesday. It is their privilege and the privilege of their attorneys at the trials next week to prove these charges false if they can do so. The citizenry of this county and this state wants these negroes to have every opportunity to prove their innocense before a verdict is rendered. If they cannot prove innocense the law is expected to do its full duty.

Next Monday should be orderly in Scottsboro in every way. A tremendous crowd will be here, most of them out of curiosity. The town will have a hundred or more soldiers in it too. Every body is urged to keep down any and all friction with the troops. They are nice, gentlemanly young men from our neighboring counties who will carry out their every obligation to their state and country and are not sent here as "bullies" to intimidate citizens.

[fol. 14] The Sentinel is not prejudiced. The nine negroes face the gravest charges ever docketed at one time in Jackson County or Alabama. The evidence against them is corroborated and witnessed. It hardly seems possible that all evidence can be broken down, but these negroes will be given every right of defense of their own liberties and lives. Jackson County lives by the law; it will accept the settlement of this matter by the law. But we just want the world to know that these negroes were not scooped up on vague charges and slammed in jail on the pretense of a rape charge. The editor of this paper heard and saw the two poor white girls identify and point out the negroes and heard and saw the white boys who were thrown from the train and the one who was held prisoner and witnessed, he said, the wholesale rape of these two helpless white women, identify and point out every one of the nine blacks, as parties to the rape and assault. This white boy was bruised and scratched, he said by the negroes choking and beating him.

The Sentinel is not trying to convict the negroes without a trial, it just resents the insinuations of those who accuse our citizenry of being acting on race prejudice, when evidence and not prejudice is what is holding and indicting these negroes. We fail to see where a change of venue could benefit the negroes very much, if any. The testimony would be the same, and the witnesses are as well known elsewhere as in this county and court.

A Hideous Blot

(Chattanooga News)

How far has our vaunted Southern chivalry sunk when we must contemplate two young women being forced out into the world to find work, and when we review the fact that they were then forced to return home in overalls, stealing a ride in a gravel car on a freight train. How far has humanity sunk when we must contemplate the frightful things which occurred in that gravel car. How much farther apart than night and day are the nine men who perpetrated those frightful deeds and a normal kind-hearted man who guards his little family and toils through the day, going home to loved ones at night with a song in his heart.

How is it possible that in the vesture of man can exist souls like those nine, while others in the vesture of man can dream such beauty as Keats dreamed, or can paint as did Raphael, or sing as Caruso, or play as Kreisler? The beasts of the fields do not differ among their own kind as do men, who are either blessed or cursed with imagination.

[fol. 15] The terrible story of the ride on that freight train between Chattanooga and Scottsboro was strangely depressing to all the South. It lay like a weight on the heart of those who read it. The News urges the Alabama grand jury to return speedy indictments. We still have savages abroad in the land, it seems. Let us have the solace of knowing that at least we have arisen above the justice of savages.

Mob Violence Again Averted

(Montgomery Advertiser)

Sheriff Wann, of Jackson County, is a cool, sensible and determined officer of the law, the sort of man whose neighbors must have learned ro respect before they had occasion to test his mettle. Otherwise those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls. But with nine deputies and one volunteer standing by his side the sheriff sent word, to the impassioned men without, that he would fight before surrendering the prisoners. They stood around a while—300 of them, say the dispatches—when the weather turned cold unexpectedly and to be comfortable they dispersed and went to their homes. The circumstances were peculiarly trying. Some of the negroes have confessed that 12 of them attacked two white girls, two of the negroes having escaped capture. Ordinarily it would be next to impossible to restrain the mob spirit in such circumstances. But two factors entered into the success of Sheriff Wann in protecting his prisoners. The first is that the angry citizens without must have known that the Sheriff was in earnest. The second is the growth of anti-lynching sentiment in Alabama. Today mobs are more reasonable and tractable than they used to be because it has been the policy of public officials, especially Governors, and the policy of newspapers, for many years to condemn mob action. Alabama Governors generally have been vigorous in their efforts to combat the mob spirit. Governor Miller acted promptly and in the best Alabama tradition in sending National Guardsmen to Scottsboro. This was *was* wise precautionary measure.

The courts are acting promptly in arranging for a grand jury investigation of the crime. In other words, in the face of extreme provocation, Alabamians have again shown that they are willing to let the law have its way.

[fol. 16] Defendants separately and severally offered in evidence, in support of their petition for change of venue, said Exhibits "A" and "B", separately and severally, and the same were accordingly admitted in evidence, separately and severally. In support of said petitions for change of venue, defendants separately and severally offered the following oral testimony:

M. L. Wann, having been duly sworn, testified as follows:

My name is M. L. Wann. I am Sheriff of Jackson County, Alabama. To bring these defendants to Court to trial today I did call this National Guard unit to accompany the prisoners in court, although I did have a crowd here, I did not see any guns or anything like that and I did not hear any threats. I had this National Guard unit so accompany the prisoners to court when they were brought here several days ago. As Sheriff of this county I deemed it necessary for the protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guard.

Cross-examination:

The Solicitor for the State propounded the witness the following question:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Defendants separately and severally objected to the question on the ground that it is leading; on the further ground that it calls for a mental operation of the witness; on the further ground that it calls for a conclusion of the witness; on the further ground that it calls for an unauthorized conclusion of the witness; on the further ground that it calls for incompetent, irrelevant and immaterial testimony.

The court overruled the objection; to this ruling of the Court defendants separately and severally reserved an exception.

The witness answered: A. Yes, sir.

The witness testified further: It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment I heard on the outside. I have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county that the sentiment is not any higher here than in any adjoining counties. [fol. 17] I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial.

Redirect examination:

I have troops here right now to keep the crowd back from the court house, and there is a great throng around this court house right now that would come in if I did not have the troops; they are from different counties here today. I know there are lots of them; there are several from Madison, Marshall and DeKalb. There are hundreds of them around the court house at the present time. They are not allowed by the guards to come to the court house. That is the rule. At the time these prisoners were arrested and brought to this jail I estimated the crowd at around two hundred. Then I took precautions to protect them. I thought that was my duty as an officer. I think there are three or five units of the National Guard here, protecting these defendants at the present trial, if I understood Major Starnes. I have five units of the State militia here now.

Joe Starnes, having been duly sworn, testified as follows:

Direct examination:

I am Major Starnes, of the Alabama National Guard. I have one Hundred and seven enlisted men here protecting these defendants. There are five units of the National

Guard represented. I have eleven officers. I have one hundred and seven enlisted men and some non-commissioned privates. Two companies accompanied these defendants to this court.

Several days ago I had a picked group of twenty-five enlisted men and two officers from two of my companies to bring these defendants over for arraignment. I received the call — the State Adjutant General at Montgomery at nine o'clock P. M., on the evening that the attack occurred in the afternoon. On every occasion I have been in Scottsboro I have found a crowd of people gathered around, and at the present time I have issued orders to my men not to let any come in the Court house or court house grounds with arms. That situation exists right now, and has existed not only today but under orders of the Court on every appearance [fol. 18] of the defendants. My units of the National Guard have protected these men and have been with them on every appearance they have made in this court house. Every time it has been necessary, and for the arraignment of the defendants I have brought them here and have carried them away. After these men were arrested I first brought them back on Tuesday of the past week, is my recollection, March 31st. I brought them back here for arraignment. We arrived here at 10:30 and left at 4:00 o'clock. I brought them at 10:30 in the morning and left at four in the afternoon and took them back to Gadsden; then I brought them back here and arrived at 5:15 o'clock this morning. I have had them here twice from Gadsden. I brought them here and carried them back.

Cross-examination:

I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have *have* made here from Gadsden. In my trips over to Scottsboro in Jackson county and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants. I have seen a good deal of curiosity but no hostile demonstration. *My* my judgment the crowd here was here out of curiosity, and not as a hostile demonstration toward these defendants.

The foregoing is all the evidence offered on the hearing of said petition of defendants for a change of venue.

ORDER OVERRULING PETITION FOR CHANGE OF VENUE

"The petition for change of venue having been heard on this — day of April, 1931, before the Honorable A. E. Hawkins, Judge, presiding, on the evidence introduced in open court and the exhibits, the copy of the Jackson County Sentinel and the proof introduced for the defendants, and for the state, and the court being of opinion that said petition is not well taken, the same is overruled and disallowed. It is, therefore, ordered and is the judgment of the court that the defendants' petition for a change of venue i*s* this cause be and the same is hereby dismissed. The defendants duly excepted to the action of the court in dismissing their petition for a change of venue."

Upon motion of the State the court granted a severance as to the defendants in this case, to-wit, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene [fol. 19] Williams, and the case proceeded against said defendants.

Before proceeding to strike the jury in this case defendants separately and severally demanded a special venire in addition to the regular venire for the trial of this case.

The court declined to allow a special venire for this case and required the defendants to strike a jury from the regular venire drawn for the week and the special venire drawn in the case of the State of Alabama vs. Charley Weems and Clarence Norris, to which action of the court in not allowing them a special venire in this case, and requiring them to select a jury from the regular venire and the special venire drawn in the case of the State of Alabama vs.

Charley Weems and Clarence Norris, defendants separately and severally reserved an exception.

Thereupon, after the striking of the jury for the trial of this case, the following proceedings were had:

Victoria Price, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Victoria Price. I live at Huntsville. I am twenty-one years old. I was before the grand jury ar this term of the court.

Before that grand jury, on or about the 25th of March, I was on a freight train traveling through Jackson County, from Stevenson to Paint- Rock. I got on the train at Chattanooga. Ruby Bates was on the train with me; there was nobody else. I had left my home at Huntsville the day before and rode on a freight train to Chattanooga. Ruby Bates was with me the day before. On the 25th of March I saw these defendants over there five of them, back there on that first row, on that freight train. The train was right on this side of Stevenson in Jackson County, when I first saw them. I saw these defendants come over the top of the car box. I was in a gondola car at that time. That is a car without a top to it, with sides extending up. Gravel or chert was in that car. It was not full to the top with gravel; it was up about waist high. These defendants came over the top of a box car which was next to the gondola car. As these defendants came over the top of the box car I was in the end of the gondola next to where they came over. There were seven white boys and the Bates girl and I in there as these defendants came into the gondola car, and all of these defendants got into the gondola car where we were. When the defendants got into the gondola car they began to knock the boys off and told them to unload; they began to knock them off and after they got them all off they attacked us two girls. The first one of these five defendants [fol. 20] that put his hands on me was the one sitting there with the sleepy eyes, Olen Montgomery; he ravished me; he had intercourse with me. His private parts penetrated my private parts. While he was having intercourse with me that one sitting yonder, Eugene Williams, was telling me I had better keep my legs open. He had a knife open in his hand. He was standing up right over me, almost. While Olen Montgomery was having intercourse with me this Eugene Williams said if we told it any way at all he would kill us if he had to come to the house and hunt us up. The rest of the defendants were standing there waiting on him, standing up over me, at the time Olen Montgomery was having intercourse with me. Each one of the defendants had a knife in his hand. While Olen Montgomery was having intercourse with me they told him to hurry up. They said the train would soon stop and they wanted their share. When Montgomery was having intercourse with me that defendant sitting right there had me by the leg, that one sitting there on the end, that one with his hands on his jaw. I don't know his name. There were twelve of them that came into the car, and these defendants were included in the twelve. They engaged in a fight with the white boys, putting them off the train. While Olen Montgomery was having intercourse with me and the other one hold me, the others were going up by the side of the car, looking and keeping the white bo*us* off, telling them that they would kill them, that it was their car and we were their women from then on.

They had knives in their hands at that time. There was one of these white boys, that Gilley boy, on the train. I got off the train at Paint Rock. These defendants were in the car there when the train stopped at Paint Rock. When the train stopped at Paint Rock I climbed on the side of the gondola after I got my clothes fastened up, and started to get off and fell off. I had on overalls and a shirt and this coat and hat. That old big one sitting back yonder took my overalls off. That defendant sitting yonder with his hand up to the side of his head helped him take my overalls off me. I stayed in Paint Rock after I got off the train about an hour and twenty minutes, I guess. I was sitting in the store in Paint Rock when I came to myself. Ruby Bates got off the train at the same time and went with me into the store.

They put me in a chair and taken me up there. When I left Paint Rock I came here. Ruby Bates was with me. Some doctors made an examination of me that afternoon. [fol. 21] About an hour and a half or two hours after I got off the train at Paint Rock the two doctors made an examination of my person in Scottsboro. All five of these defendants were in that car there with their knives open. They came over together and jumped into the car of gravel.

Cross-examination:

When I got on the train at Chattanooga I intended to go to Huntsville to my home. When the train stopped at Paint Rock nobody suggested or told us to get off. We got off of our own account. I did not know any officers were at Paint Rock but there was several there and had the train surrounded. I got off the train there because I did not want to go any further. I wanted to see what they done with those negroes. I knew they were going to get them because they had the train surrounded and they called up from Stevenson. I learned that after the train got to Paint Rock. About an hour and a half or two hours after I got off the train at Paint Rock I went to the doctor. I went to the doctor's office myself. I had my right sense when I was at the doctor's office. That big one back there is the first one of these boys I saw coming over the top. That is one of the defendants. When the boys came over we were standing in the corner, and as the white boys went to get off one came to where I was; I threw my legs over to get out and one jerked me back by the legs and threw me back. That old big boy is the one that did that. He threw me down.

It took three of them to get off my overalls. There was so many hands you could not tell which three of them took off my overalls, but he was the ring leader. I could tell two of the others that held me; one is the big one sitting back there, I said, and the other one is the one that was sitting in the chair this morning. I testified yesterday the big one took off my overalls first. I do not know his name. I don't know the names of any of them. I saw knives in the hands of every one except two, and they had guns, and he got hold of a knife some way after he put the gun down and held it to my throat. I see the men that had the guns now. There was two that had guns absolutely, a .38 and a .45 I did not see the men searched. All except two carried knives. They had the knives open when they came over the box car down into the gondola. I did not board the gondola at Chattanooga. I was on an oil tank when I left Chattanooga. I first saw the negroes at Stevenson. I did not say all five of these defendants had intercourse with me. There was six that had intercourse with me. There was three of these defendants that had intercourse with me. [fol. 22] The one sitting right yonder, and that one sitting yonder, and that one over yonder had intercourse with me. There was three *three* that had intercourse with the other girl. The ones that had intercourse with her did not have intercourse with me. I absolutely saw them have intercourse with the other girl. I did not take a good look at their faces but I knew they were over there where she was. I did not testify yesterday which one had intercourse with me first and go on down the line with six of them. I did not point out on yesterday the six that had intercourse with me. I know the faces of the ones that had intercourse with me. I could not tell which was the first, second, third, fourth, fifth and sixth, because they began to get down so fast I could not keep account of it. I could not recognize them all the way down. I had plenty of sense, and I remember the faces of the six that had intercourse with me. That old big one is the first one that had intercourse with me.

Redirect examination.

That defendant right there next to the last one had intercourse with me (Andy Wright); also that old sleepy eyed one (Olen Montgomery), the second from this end there, and also the last one (Eugene Williams). While one was having intercourse with me the others were running up and down the car box hallering, "Pour it to her, pour it to her." They had knives in their hands at that time. While the first and third ones were having intercourse with me on that occasion that first one there (indicating) was holding a knife against the Gilley boy, the white boy that was on the car. While this was going on the third one over there with the other girl a part of the time and was back there with Gilley boy. He had an open knife in his hand.

The third one, Willie Roberson, was one of them that was running up and down inside of the car. That third one held me; he pulled my legs apart once or twice. That is Willie Roberson. He is the one that had me by the legs and he and the others said, "Jerk her legs this way" and he just caught hold and jerked my legs that way.

Recross-examination:

The guns were not held on me all the time. They d
their guns on us once when I went to get off and when
drawed the gun on me I told him to shoot me and then
commenced surrounding us up there and threw us d
there, that old big one did, and the other boys in the
walked up and down inside of the gondola keeping the w
boys off and shot five times over the gondola where
[fol. 23] boys were. I didn't testify yesterday there
only one shot. I know what I said yesterday. I say t
there — seven shots fired in all, from the time the ra
started until it ended. I have lived in Huntsville ele
years. I live at 313 West Arm Street.

Ruby Bates, a witness for the State, having been d
sworn, testified as follows:

Direct examination:

My name is Ruby Bates; I live at Huntsville. I am sev
teen years old. On or about the 25th of March of this y
I was on a freight train running between Stevenson
Paint Rock in Jackson County, Alabama. Victoria P
was with me. There was no one else with me. I was
ing on a gondola car shortly after the train left Steven
There was gravel in that car. Victoria Price was in th
with me. I saw those five negroes on the front row, th
five defendants, in that car after the train left Steven
Alabama. I saw all five of them. When I first saw th
they came over the end of the car box. That car box
attached to the gondola I was in. They all came over
a bunch. They had guns and knives in their hands. T
had two pistols, and I saw some knives in their hands.
knives were open. At the time they came over that box
there were seven white boys in that gravel car besides
toria Price and I. Victoria Price and I were in the en
the gondola at the time these negroes came over the
car. We were in the end next to the boxcar. When th
defendants came over the box car they told the white b
to unload, and then they attacked us girls after they
the white boys off the train.

They hit two of the white boys in the head with pistols and drawed the knives on the rest of them, and the guns. These negroes were in the bunch that came over the box car. All five that I am now looking at got down into that gondola car. All five of them were engaged in that fight with the white boys. The white boys got off the train. They fought these negroes until they couldn't fight them. I had on overalls and shirt on that occasion. I had a coat on over the overalls and had a hat on. My overalls were taken off me. None of my other clothes were taken off; just the overalls. The colored boys ravished me then. They put their hands on me.

Cross-examination.

The overalls were the only article of wearing apparel taken off me. One of the colored boys took them off; I could not say which one. I could not point him out at all. [fol. 24] I don't know whether he is one of the defendants or not, but I know he was one of the colored boys. They all came over in a bunch, including the five now being tried, all right behind the other, as soon as they could get down in the gondola. There were twelve al*l*together. I don't know which one of them ravished me. I just know an intercourse was held with me. I was ravished six times. I came from Huntsville to Chattanooga on the 24th. I stayed all night in Chattanooga at Mrs. Brochie's. A boy that lived in Chattanooga directed us to Mrs. Brochie's house. I did not, neither did Victoria know him. I just met him on the street. He did not go with me to this home. I have not seen him since. Mrs. Brochie lived on Seventh Street, but I do not know whereabouts on Seventh Street; I could not tell that. I have never since seen the boy that directed me out there. There were some boys in the car with me going from Huntsville to Chattanooga. I did not talk with them, didn't say a word to them. I don't know how many there were in the car. There were several white boys in the car, but I don't know how many. I was not acquainted with them. Victoria did not talk to them. There wasn't a word passed, and we were in the same car.

There were seven boys in the car on the 25th when we started back to Huntsville. They were not the same boys or any of the same boys that were on the train with us the day before. I had never seen any of these seven before. I had not talked with them; had not had any conversation at all; I had never seen any of those boys before. I just don't know who of them had knives but all of them except them that had guns; I don't know whether them that had guns had knives or not. Just two had guns. Every one of the colored boys I say that day had intercourse with me or with Victoria. I could not be mistaken about that. I was not so excited that I didn't know and couldn't point out any of them.

Redirect examination:

I went to Chattanooga looking for work. Victoria Price went along with me. We were both dressed in overalls. We went to Chattanooga on Tuesday and started back on Wednesday. We rode a freight train up there and rode a freight train back the next day.

Recross-examination.

I rode a box car from Huntsville to Chattanooga, and there were several white boys in that box car.

Dr. R. R. Bridges, a witness for the State, being duly [fol. 25] sworn, testified as follows:

Defendants' counsel stated to the court that the qualifications of the witness as a physician were admitted.

I recall the day it is said this freight train was stopped down at Paint Rock and some negroes taken off. On that day I made an examination of the women, Victoria Price and Ruby Bates. I was in my office when I made that examination. It was about four o'clock or a little later, in the afternoon. I found that both girls had a few minor scratches on their hands and arms and the Bates girl had some bruises on the lower part of the groin right in there on each side about the size of a nickel or a little larger, and she had a bruised place on her shoulder, and the Price girl, if I remember, had a bruise place or blue place here on the throat and on her hip behind, in the lower part of the back, right along the lower part of the hip, and a few scratches on the forearm, and they both had vaginal secretions that showed male germs, the spermatozoa. That is about all I think we found as I remember. I found semen in the vagina of each one. I put that under a microscope. In my judgment as a physician sexual intercourse had been had with each one of these women. I could not say as to the minute or the hours how long it had been since they had had sexual intercourse, but the vagina was still loaded with secretions, and especially in the Bates girl; her vagina had more secretions than Mrs. Price; both had plenty of the semen in there, plenty of the male germ. There were no recent lacerations. In my judgment as a physician six negroes could have gone to these women without lacerating them or tearing the genital organs.

Cross-examination:

The semen did not move, and we don't swear as to whether it is dead or alive unless we see it move. There was nothing to indicate as to how long it had been since intercourse. I could not swear as to the time. I have observed and examined the privates of one of these defendants, Willie Roberson. He is diseased with syphilis and gonorrhea, a bad case of it. He is very sore. It would not be very painful for him to have intercourse; I think it would be painful but not very painful; it is according to how much anesthesa, how much deadening he has. I do not know how much deadening he has. I just conducted a superficial examination. It is possible for him to have intercourse. I have seen them that had it worse than he [fol. 26] has. I think it would be attended with some pain.

Redirect examination:

The territory between Stevenson and Paint Rock on the Southern Railroad here is in Jackson County, Alabama.

Recross-examination:

I testified I did not find any recent lacerations. I could tell from the appearance of their organs that there was present intercourse and from Mrs. Price there were three tags of lacerated hymen. I could not say how old it was. It might have been a slight laceration from child birth. I believe she admitted a miscarriage. It could have been done there or the first intercourse. Mrs. Price admitted intercourse with her husband, and the other said she had.

Redirect examination:

Mrs. Price admitted to me that she had miscarried, and also admitted she had been married.

Tom Taylor Rousseau, a witness for the State, having been duly sworn, testified as follows:

I live at Paint Rock, Alabama. I was out there at Paint Rock in this county on the day when these negroes were taken off the train there. I saw those five on the front row over there about the train that day. They were on the freight train when I first saw them. They were in a gondola car. I saw some women there; they were in the back end of the same car. I saw the women when they were in the car and saw the negroes when they were in the car. The negroes were still on there as far as I know right then. I later saw them after I got down there. The next time I seen them they were bringing one of the girls up in a chair. They brought her up there in town in front of the doctor's office. That was Victoria Price. She was unconscious. She was in a chair and they were toting her and her head was over this way and her eyes closed, from the depot to the doctor's office. I saw those five negroes there in that car where the girls were. I seen them get out of the car. I did not see anybody else in that car at Paint Rock.

Cross-examination:

I did not talk with the girls when they got out of the train. I could not tell you who did talk with them. All I know is some of the fellows brought her up there, W. A. Mize, the signal man for the Southern Railway. I don't know whether he took her off the train. I was not there when they removed the girls at all. I don't know any thing about what went on on the train except what I have [fol. 27] heard. I just saw the negroes on the *time*; I just saw them coming out of the car. I helped to catch them and from my observation of them one time I ought to recognize all of them. I went to the station for the purpose of helping catch them.

T. M. **Latham**, a witness for the State, having been duly sworn, testified as follows:

I am a deputy sheriff. I live at Trenton. I was down at Paint Rock the day these negroes were taken off the freight train there. I saw those five defendants on the front row on or about that train on that occasion. They were in the coal car, or gravel car, rather, when I first saw them there. That car is known as a gondola car. I saw these girls Victoria Price and Ruby Bates after they got out on the ground. I saw them get out of the gondola car, the same car the negroes were in. One of these women, Victoria Price, could not walk. They took them up in the boiler room of the hosier- mill there at Paint Rock first; then I think they took them to the doctor's office. I had charge of the prisoners and I did not go with them.

Cross-examination:

All I know is that I got word to go *donw* to the station and arrest them and I took them off the train.

T. L. **Dobbins**, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live this side of Stevenson, about thirty yards, I guess, from the right-of-way of the Southern Railroad. I live about two miles this side of Stevenson. I remember the day it is said these negroes were taken off this train down at Paint Rock. On that day I observed a freight train passing along the railroad near my place up there headed this way toward Huntsville. I guess that was about twelve o'clock, between eleven and one o'clock somewhere. I seen several people on that train as it passed. I could not tell much what they were doing only I seen some people in a gondola and they were scuffling and I jumped to the door and before I could see to tell what they were doing my view was cut off. That was a gondola car. I could not tell whether they were white or black. I saw some scuffling going on. I did not see anybody get off the train or thrown off the train. There was a fellow running back this way [fol. 28] on a box car, back in behind. I knew him. That was Will Cox. After the train passed I did not pay any attention to anybody along the right of way there. I just saw it pass.

Cross-examination:

I just saw the train pass on that day with people in the gondola car. I don't know anything about who they were.

See Adams, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson. I recall the day it is said this train was stopped at Paint Rock and some negroes taken off it. On that day I was near the railroad when the train passed coming this way going toward Huntsville. I saw a bunch of people in a car box, negroes, in a coal car. I don't know the name of the car, but they were in a coal car. I was on the left hand side of the railroad and I saw striking this way (indicating), and the train ran on a little piece and I saw a man go out over the car over on the right hand side of the road from me, on the opposite side from me. He wert off down on the other side from me. I just saw him go over. The backs of the men doing the striking were to me. After the train passed I saw two white men coming back up the railroad, going in haste back towards Stevenson.

Cross-examination:

Those men had th*ere* backs to me and were striking that way and then of course, there was a whole raft of negroes—no, they were negroes in the car—some were sitting on the side of the car and some were standing up. I know they were negroes. They were standing looking on, looking that way, in the gondola car. There was a whole host of them standing there looking on, somewhere around ten or twelve or fifteen, something like that. They were fighting and scuffling; not all of them; I saw, I think two personally and the others were standing around looking on.

At this point the State rested its case.

[fol. 29] DEFENDANTS' EVIDENCE

OZIE POWELL, one of the defendants, having been duly sworn, testified as a witness in behalf of the defendants as follows:

My name is Ozie Powell. I was on that freight train traveling out of Chattanooga toward Huntsville on the 25th of March. I boarded the train at Chattanooga. That boy right there (indicating) was with me when I boarded the train. I met him in Chattanooga. That is the only boy I knew, and I did not know him real good. My home is in Atlanta.

I got on a crosstie car, got on the flat car with crossties on it, and there was just one boy with me when I got on the trail. I just met him in Chattanooga. I did not run on the other boys. I crossed over and got between the gondola and a box car and I did not see him until I got to Chattanooga again; that is when I missed him, down to Paint Rock; that is when I missed him, when I got down between them cars. I was not with him on that train; he was going to Memphis and I was too. I was not in the fight that took place on the train. I do not know what car on the train the fight took place. I don't know when it first started up but when I seen it, it was in the gondola car.

I saw the fight then. When they were fighting in the gondola I was between the gondola and the box car. This fight was going on in the gondola. I could not tell you about how many gondolas there were in the train; a right smart, I know, though. I do not know how many negroes and white boys were in this gondola fighting. I had not been with any of them. I did not see any women in that car. I did not see no women until I got to Paint Rock. I never said anything to any woman on that train. I did not grab any woman. I did not hear anything said about women before I got to Paint Rock. I did not hear nobody say nothing about no women until I got to Paint Rock. That is where I found this buddie of mine that was with me; after I left him on the crosstie car and go*wn* down between the gondola and the box car. I never did get over in the gondola; I never was in the gondola. I did not have a knife. The officers searched me and didn't find a knife. I did not have a pistol. I had not thrown away a knife. I did not even have any knife.

Cross-examination:

I don't know what negro I was with. They call him Willie, the one standing right yonder, the one in the front [fol. 30] seat on that side on the end. When I looked over in the gondola I didn't see him over there. I got on the train in Chattanooga. I got on a car that had crossties on it. I didn't know how many cars was between that car and the gondola car where I saw these negroes all in there; there were about three or four. There wasn't anybody over there when I crossed over from the crossties to the gondola. I crossed over on a box car and then I climbed down between the box car and the gondola. I did not see anybody up on top of the box car, did not see a soul. While the fight was going on I seen some over my head, coming in the gondola, and I saw fighting going on in the gondola. I did not see any pistols or knives. I did not know any negroes fighting in there. They were fighting with white boys. I don't know what they did with the white boys. The white boys hopped off. I don't know how many hopped off. I don't know what part of the road that happened on. I don't know nothing about the road at all.

We stopped one place from the time we left Chattanooga until we got to Paint Rock. I don't know the name of that place. I would know it if I heard it. It was Stevenson. That is not where I changed over.

I had done changed over. I did not know these other negroes were on the train. I knew there was a gang on there, but I did not know all of them. I did not see them and the white boys together up at Stevenson. I did not see any at Stevenson. While I was at Stevenson I was between the gondola and the car. I crossed over from the crosstie car to the gondola car when I first come through the tunnel, I left the crosstie car and came to the gondola car because the wind was blowing and I got down in there to keep the wind from striking me. I- would not have been better to have stopped between the box car and the gondola car to keep the wind off, because a gondola car made like this you can get up under them. I was sitting back under there. That kept the wind off me. I did not see the white boys or the negroes walking along the ground while I stopped at Stevenson. I rode from just after I passed through the tunnel down to Stevenson under that gondola. While I was stopped at Stevenson I did not see any of these negroes at all. I don't know what became of my bu*nch*. I knew he was on the train when I left him, but I don't know where he went. I did not see any of these boys or girls or negroes either all along the road until I got to Paint Rock. I did not see them after I left Stevenson crossing over, getting in that gondola. I did not see them at all. Right after I passed Stevenson I saw them jump off the box car into the gondola. I saw the negroes going [fol. 31] into the gondola, crossing up overhead above me. They would not come down on the place I was. They just jumped over the gondola from the top of the car. I don't know how many crossed over. I did not count them. There was a gang of them. I did not hear them say anything.

I heard them cursing. I heard fighting. I heard some boy say, "Get off," I don't know who it was. The other boy said he was not going to get off unless they threwed him off. I did not hear anybody throw him off. I seen him climb off. I saw the boys getting out of there. There were seven white boys. I did not hear a pistol fire. I sat there from Stevenson all the way to Paint Rock and never heard a pistol. I heard two or three words cursing in there. I did not hear a woman scream in there. I didn't hear a woman holler. I didn't look up in there to see who was in there and I don't know who was in there. I don't know whether any girls were in there or not then. Nobody saw me back under there.

I guess the white boys seen me after I poked my head around. I never did see the girls.

Redirect examination:

There was a good deal of noise made by the train. I don't know exactly where the train was when the fighting first started, but it was on this side of Stevenson. That is the first I knew of any fighting.

There were a good many negro boys on that train that are not here now. There was a gang of them. I don't know what became of them. I don't know anything about them at all

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Willie Roberson, one of the defendants, having been duly sworn, testified as a witness for the defendants as follows:

Direct examination:

My name is Willie Roberson. I live at Memphis, Tennessee. I had not known any of these boys before that day I met them on the train. Ozie Powell and I got on the train together at Chattanooga. I met Ozie Powell in Chattanooga. He got on one end and I got on the other. I was by myself when I got on the train at Chattanooga. I don't know what became of Ozie Powell. He got on one end and I got on the other. After I got on the car I stayed where I got on it, between two box cars and after it stopped at Stevenson I walked back and got in an empty box car by myself, the third car from the caboose. I got on a log car, a flat car, when I first got on at Chattanooga. That car [fol. 32] had a lot of logs on it. Then I rode until it stopped, and after it stopped I walked back down and got in a box car and laid down. I continued to stay in the box car until I was taken off the train at Paint Rock. I did not see the other boys on the train going down. I did not see but one, and that was Ozie Powell, and I saw him when I first got on the train in Chattanooga. I did not see any other negroes on the train until I was taken off at Paint Rock. I did not know anything about the fight. I did not know there had been a fight on the train until I was told about it at Paint Rock. I am the boy that the doctor testified was suffering from syphilis and gonorrhea. I went to Atlanta to the Grady Hospital for that. I have had that trouble four months. They did not take me in the Grady Hospital. They asked me if I stayed in Georgia and I told them no, sir, and he told me to come in and they would give me a treatment for gonorrhea and syphilis.

They said they could not take me in Atlanta because I wasn't registered there. I suffer now from both diseases, syphilis and gonorrhea. I have chancres. They are swollen and sore. I could not have intercourse. I am in such shape that I could not have intercourse. I exhibited my person to the doctor yesterday. That trouble I have is painful. It pains and hurts me all the time. I was sick on the train, lying down in the box car. I was in the box car from the time I left the flat car until I got to Paint Rock. A man came in and throwed a pistol on me. I was not armed in any way. I did not have a pistol. I did not have a knife. The officers did not find a pistol or knife on me. I knew about none of these other negroes except Ozie Powell.

The reason Ozie could not find me on the train was because I was in a box car, in there lying down on one end. There was something the matter with my privates down there; it was sore and swelled up. It hurt me to walk. I can not lift anything. I am not able to have sexual intercourse. I couldn't have.

Cross-examination:

My name is Willie Roberson. I just met Ozie Powell in Chattanooga.

I am the one that had syphilis and gonorrhea too. I didn't hold the other little girl's legs while the other one ravished her. I did not hold her legs open and say "Hold your durn legs open." I did not take my hands and pull her legs apart for two of them while two ravished her. I swear that I did not do that. I was traveling in a box car when they arrested me in Paint Rock. They took me out of a box car. I never saw any of the other negroes anywhere along there. I went in the box car after it stopped [fol. 33] there. I was feeling bad and I walked back down there and got in the box car and stayed there all the time. I am not the one that held her legs open while two of the other negroes had intercourse with her.

Andy Wright, one of the defendants, being first duly sworn, testified:

Direct examination:

My name is Andy Wright. My home is in Chattanooga, Tennessee. I have lived there all of my life. I drive a truck for the B. L. Tally Produce Company there; he is a wholesale produce dealer. I am nineteen years old the 23rd day of this month. I got on this train at Chattanooga. Haywood Patterson, Roy Wright and Eugene Williams were with me. Ozie Powell nor Willie Roberson was with us. I had not seen them in Chattanooga. I did not know they were on the train; I did not find out they were on the train till after I got to Paint Rock. I boarded an oil tank car, and stayed on that car until the train was going into Stevenson. I got off the train at Stevenson. When I got on the train again, I got on a gravel car, and at that time Eugene Williams, Roy Wright and Haywood Patterson *with* with me. There was nobody in the gravel car at that time but just we fou*d* boys. The gravel car was a gondola; there were six or seven of them in the train. They were not all in line, about four in line and them some others, and then box cars in between the gondolas. I did not see any girls. I saw some fighting between those colored boys and the white boys; I saw some hop off; I heard a boy hollowing and went to see what was the matter with him, and he told me to help him and I caught him in the belt and picked him up and helped him back on the train; that was a white boy. I did not see any girls in that car; I did not see the girls. I do not know whether there were any other negroes on the train other than those I was with.

I saw some negroes getting off of the train after I saw the white boys getting off. Those negroes are not here in court. I do not know how many got off the train; three got off before we got to Scottsboro, and then I saw two get off a little below there. The train did not stop at Scottsboro. I did not have a pistol or knife on me. The officers searched me at Paint Rock, but did not find any knife or weapon of any sort on me.

I did not have intercourse with a woman on that train.

I did not even see a woman on the train; I saw them after I got to Paint Rock; I saw two there, the two women [fol. 34] who are here in the court. That is the first time I had seen them. I had nothing whatever to do with them. I did not hit any of the white boys; I was not engaged in the fight. All I did was to reach out and help pull a white man back up in the train. I do not know how many white men left the train; I do not know what started the fight.

Cross-examination:

My name is Andy Wright. I saw the woman sitting over there in Paint Rock; I never saw her before I got to Paint Rock. I did not see that woman; I did not ravish her or curse her. I did not say to her, "God damn you, if you hadn't been so damn smart and fought like you did, we wouldn't have bothered you." I did not tell her, when I got through ravishing her, "Yes, you will have a baby after this." I did not have any such talk as that; I swear that I was not in that car where the women were; I never saw this woman; I never had any talk like you stated, none at all. I will stand on a stack of Bibles and say it.

OLEN MONTGOMERY, one of the Defendants, being first duly sworn, testified:

Direct examination:

I am Olen Montgomery; I live at Monroe, Georgia. I got on the train in Chattanooga, on an oil tank. I was alone; no one was with me. I did not see any other negroes on the oil tank; I was the only one there where I was. I stayed on that car from Chattanooga to Paint Rock; I did not see anything of this fight; I did not know anything about it until I got to Paint Rock. I did not know there were other negroes on the train. I was not acquainted with any of the other boys at that time. The only acquaintance has been since I was arrested. I did not know women were on the train. I did not have anything to do with raping those girls; I had not seen them. If I had seen them, would not have known whether they were men or women; I cannot see good. I first saw them at Paint Rock. I did not see any of the other boys on the train because I was away back the seventh from the end. I was on an oil tank car. I do not know how many oil tank cars there were in the train; I saw four. I do *now* know how many cars there were in the train, about forty cars. The tank car on which I was riding was away back at the lower end of the train, the seventh from the end. I do not know where the gondola was that they were fighting in; I did not see in it and was not in the gondola.

[fol. 35] Cross-examination:

I did not know any of the boys. I live at Monroe, Georgia, forty-eight miles below Atlanta. I was going to Memphis. I left my native town on Tuesday before, I came to Atlanta. I was going to a clinic hospital in Memphis, to have my eyes worked on. I did not know of any these boys on the train; I was just on the oil tank. I reckon I could be seen on the oil tank; I did not see anybody on that oil tank. I rode all the way from Chattanooga to Paint Rock on that tank. I did not get off at Stevenson. I did not see any negroes or boys pass my car. I did not see anybody at Stevenson. I just stayed on there and went on to Paint Rock, and they took me off that oil tank when the train reached there. There were six cars between me and the caboose of that train. I do not know how many were between me and the engine, but a good many. I did not see the gondola that they claimed the fight was in when I got to Paint Rock. I did not see any of those boys up there at Stevenson; I did not see them walking along the track or anything. I can see the woman sitting over there. I will swear to the jury that I never saw that woman before. I am not one of the boys that ravished her on that occasion; I did not have anything to do with it. The negro, Willie Roberson, did not hold her legs while I raped her in that gondola car; I did not have anything to do with her.

I did not hear any shooting or any cursing on that train. I heard the brakeman and conductor talking back there at the caboose. They could have seen me if they had tried to do so. I do not know whether they saw me or not. I was back there alone. I did not have anything to do with those girls.

Eugene Williams, one of the Defendants, being first duly sworn, testified in his own behalf, as follows:

Direct examination:

I am Eugene Williams. My home is at Chattanooga, Tennessee. I have lived here all of my life. My parents work there. I do not work there. I live with my parents. I was going to Memphis, Tennessee; just going over there to be going, just riding. I had been to Memphis before; I have been there two or three times, and I was going back over there just to be riding. I was with Andy Wright, Haywood Patterson and Roy Wright when I caught the train. I do not know this Roberson boy or Ozie Powell. I do not know when they got on the train.

[fol. 36] I got on an oil tank. I did not see Olen Montgomery. I do not know him. I did not see him or know that he was on the train until after I got to Paint Rock. The oil car on which I got was pretty close to the cab of the train, that is the *rail* end of the train. The gondola where the fight started was not so very far from the car that I boarded. I stayed on this oil car until we got to Stevenson. I got off the train there, and the other boys with me also got off the train there. I had not joined any other boys on the train before I got to Stevenson; I had seen some boys sitting on the side of a cross-tie car. I do not know how many of them there were, about seven or eight. They were still on that flat car when the train left Stevenson. I did not go to the flat car where they were. I went over in this gondola when the train left Stevenson. There was nobody in there when we went over there. After we got in there, some others came over the top going toward the engine. I had come over the top of the box car down into the go-dola. There were no others in this car when we went down there except we four. There were no girls in there at all. I did not see any girls until we got to Paint Rock. A fight took place there in the gondola; we fought those white boys. I do not know how many white boys there were, about seven or eight. There were eight or nine of us boys. The girls were not in there. I did not see the girls at all until we got to Paint Rock. No shooting took place in that car; I did not hear any shots fired. One boy had a gun, a long tall, yellow boy with duck overalls on. He and two other boys jumped off the train. About five or six boys that were not arrested left the train; five or six got away. I had a knife; it was like that man had there; that was my knife. I did not use that knife in this fight, but kept it in my pocket. I was in this gondola car when I was arrested at Paint Rock. We started up toward the engine and saw a crowd down there with guns and things. I do not know whether they had the girls down there at that time. When we got up to the depot, a man cam- running up there and said we raped those girls.

I had not done anything. I had not seen them until we got to Paint Rock. Olen Montgomery was not with us; I reckon he was by himself. I had not seen him. The names of the boys with me were Andy Wright, Roy Wright and Haywood Patterson; I was with them; they are the only defendants I saw; I got on the train with them. Some of the boys are over there that were fighting down in that car, but I did not see Olen Montgomery, nor did I see Roberson. I did not see him until we got to Paint Rock. I saw Ozie Powell. He helped to fight the boys but he did not touch [fol. 37] the girls. Andy Wright helped to pull one of the boys back up on the train; he was just helping him back on the train to keep him from falling off; I did not see anybody rape the women on the train. There were a good many negroes on that train, a right smart of them. About five or six left the train.

Cross-examination:

The train did not make a stop between Stevenson and Paint Rock. They jumped off of the train while it was running. I had that long knife that you (Solicitor) had this morning. (Witness is handed knife.) This is my knife. I did not lend it to anybody. I did not rape any girls.

I did not rape that one over there. I did not hold this knife at her throat while anyone raped her. I did not see anything of that kind.

This is my knife. The man down in Paint Rock took it off of me. He got it off of me. I did not lend it to anybody else. I kept it all the time in my pocket. I did not have this knife at that girl's throat while the other negroes raped her.

Here the defendants rested their case.
Defendants rest.

Rebuttal Evidence—State

Victoria Price, a witness for the State, being called in rebuttal, testified:

Direct examination:

I saw the negro that was just on the witness stand. (Witness is handed a knife.) I have seen this knife before. I saw it in the hands of two of the boys; one of them is the big boy sitting over there (indicating) and that one just now on the stand. The big one sitting over yonder (indicating) is the first one that had the knife, and the last one in the — also had it. The last one in the chair raped me; that was Eugene Williams. After he raped me, he gave the knife back to the big boy and he commenced holding it to throat, and held it there while Eugene Williams raped me. This is the knife, and those are two that raped me.

Cross-examination:

My companion and I have been held in jail since the 25th of March last month; her name is Ruby Bates. We have been in confinement here in jail ever since. I have gone to [fol. 38] the Doctor's office and to the barber shop with the deputies, with Mr. Wann here and with Mr. Charley. They keep us locked up at the jail, both of us locked up there.

Redirect examination:

On Monday, Mr. Wann took us to the drug store. We were only kept there for the purpose of being a witness in these cases. There were no charges against us. We were in the run-around of the cell. We go out in the hall or in the nurse's department of the jail. We are not confined down there.

Willie Roberson, a witness for the Defendants, being recalled by the State, testified:

Direct examination:

I have testified that I was sick; I am suffering with syphilis. I went up in a box car; that box car was just in front of the caboose, the third car from it. I got in the car on the right-hand side going toward Paint Rock. The door was not open; I went there and pushed it open; it was closed. I crawled in the car and lay down. I did not go to sleep; I was suffering. I pulled the door half way to as I went in. One door was pushed back and I left it half open. When I got to Paint Rock, I was taken out of that door. I do not know whether it was the officers who took me out or not; it was white men that took me off at Paint Rock. They got me out of that car; I did not jump off of that gondola and run. A man right behind a sand pile up there did not put a gun in front of me and tell me to stop. I did not apologize for running nor tell him that anybody would run under the circumstances; I did not do that. The door was half open all the time.

C. M. **Latham**, a witness for the State, being called in rebuttal, testified:

Direct examination:

I am a Deputy Sheriff down at Paint Rock. I saw Roberson that day at Paint Rock. I was on the West side of the train as it came into town; I was not on the East side. When I first saw this negro, he was up in the bunch and had his hands up. He was up there at the front of the train. I was not on top of the train, but was on the ground.

Tom Taylor Rosseau, a witness for the State, being called [fol. 39] in rebuttal by the State, testified:

Direct examination:

I suppose that I was deputized to assist in the arrest of these negroes down at Paint Rock; I was asked to go with them. I was on the left-hand side of the train the way it was going, which would be on the left hand side *of the train the way it was going, which would be on the left hand side,* or West side, as it came into the town. I did not see any doors open on the West side; I do not know about the East side; I was not on that side. When I first saw this negro here, the one on the end in front, he was up close to the engine on the train. He was between the gondola and the engine. They all came out of the gondola, going toward the engine, running on top of the freight train. I saw him between the gondola and the engine; that was before the train stopped. They started coming out when the train came around the curve right below town and I could see them that far; that is the first I saw of him.

Cross-examination:

I recognize the defendant as the man I saw when the train was coming around the curve. They were all on there. All of them came out of the gondola. I reckon they all did. They could not have been stuck on there anywhere else; there was nothing else for them to get in. There was nothing open on the West side of the train for them to have been in. There was only one got off any way back there and he got off about as far as the back end of the court room right below me. We got them off of the train; we took them all off in a bunch. We took off eight on our side and the other one was taken off on the East side. He got off one car below me, I think. They were all scattered over about three box cars on this train. I did not count the number of cars in this train; it was a pretty reasonably long train; it wasn't so very short and wasn't so very long, between thirty-five and forty cars.

Mr. Brannon, a witness for the State, being called in rebuttal, testified:

Direct examination:

I was one of a number of citizens who assisted in the arrest of these negroes down at Paint Rock the other day. I was on the right-hand side of the train as it came into Paint Rock; that is what we call the East side. I think that I saw that negro over there on the corner, on the end of the front row, on the top of the gondola car.
[fol. 40] He got off the train on the opposite side from me; I do not know who arrested him. I was watching the train as it came in; -here were no box car doors open on the right-hand side; none of them was open. I was looking for an open box car and came back up the train and none was open. The first time I saw this negro over there he was sitting on an old oil stove up there by a brick building. He was already off of the train at that time. He got off the

front part of the train, just ahead of the gondola the girls were in; I saw him getting off. He was not *a* inside of any box car; he was not inside a box car there.

Cross-examination:

There were box cars on the train. I don't know whether they were sealed, empty or what; I did not pay any attention to whether they were loaded or not. I gave a little attention to the boy who got off on my side of the train; it was my intention to get every negro off of the train; that was what the wire said. I could not be absolutely positive about where I got that particular boy; I can pick out the boy I arrested.

I could swear positively that he was riding on the gondola; he got off that; he passed by me on top of the train. I could not say just where he had been riding, but that is where he was when I saw him. I saw him about the time the train passed the depot. I did not get on the train before it stopped; it was slowing down some when I saw it. I do not know whether this boy was walking or crawling on top of the trains; he was on all-fours. I do not know how many negroes I saw; I did not count them. I would think that all the negroes are now in court. We looked the train over and got the bunch that was on the train. I know how many we took off the train. At the time I saw them, I could no*w* tell how many there were of them. When I first saw them, they were something like one hundred and fifty or two hundred yards or something like that, from me. At that time, I saw him begin to get up and as he passed me, they were all crawling, some on all-fours and some looked like they were trying to get off; that was near the front of the train. I was on the east side of the train. I do not know but just one certain officer that assisted in making the arrests; I was not an officer, but was deputized to assist. I know two that were deputized, myself and another man.

Mr. Keel, a witness for the State, being called in rebuttal, testified:

Direct examination:

I was down there at the time the freight train came into [fol. 41] Paint Rock. I was on the side-hand side as it was going toward Huntsville; that is what is known as the East side. I was not instructed to look specially for open doors of box cars; I was instructed to look for negroes on there, and naturally was looking for them to be in box cars.

I have seen the negro Roberson; I saw him after we got them up town; I don't remember seeing him down on my side of the train. I did not see an open door in any box car on my side of the train; I did not get any negro out of any box car. I did see a bunch of negroes on the gondola; I did not know one from another. I did not see anybody get a negro out of a box car on my side of the train, and I was there until they got all of them.

Mr. Gilley, a witness for the State, being called in rebuttal, testified:

Direct examination:

I am a son of Sim Gilley that used to live in the upper end of this county. I now live at Albertville, in Marshall County. I was one of the boys on that train that day. I saw all the negroes in that gondola. The one on the end there was in the gondola.

Counsel for the State asked the question:

Q. How many in that row there, look at that row of five sitting on the front—Get up and walk over there if you cannot see them?

Counsel for defendants, separately and severally, objected to the question, because it was immaterial, irrelevant, illegal and incompetent and because it was a reopening of the case, which objection was overruled, to which ruling the defendants, separately and severally, duly and legally reserved an exception.

The witness answered: I saw those five in the car.

The Witness (continuing): I saw every one of those five in the gondola.

Counsel for the State asked the question:

Q. Were the girls in there?

Counsel for defendants, separately and severally, objected to the question, because it was immaterial, irrelevant, illegal and incompetent and because it was a reopening of the case, which objection was overruled, to which ruling the defendants, separately and severally, duly and legally reserved an exception.

The witness answered:

A. Yes, sir.

[fol. 42] The Witness (continuing): I saw all five of them in that gondola.

The above and foregoing was the evidence and all the evidence adduced upon the trial of this cause.

Thereupon, after the close of the testimony, the court inquired of counsel for the State whether he desired to argue the case to the jury to which he replied in the affirmative, and, upon a like inquiry being propounded to counsel for defendant, a negative answer was given, whereupon the court stated to counsel for the State, "Well, go ahead to the jury."

(Argument to jury on behalf of State)

Thereupon, at the close of the opening argument of the State to the jury, the court inquired of counsel for defendant whether defendand wished to argue the case to the jury, and upon a negative answer being given thereto, asked counsel for the State whether the State wished to further argue the case to the jury, the reply being in the affirmative, counsel thereupon objected, separately and severally to further argument to the jury on behalf of the State, which objection was overruled, to which ruling of the court, the defendants, separately and severally, duly and legally reserved an exception.

(Argument to jury on behalf of the State.)

Thereupon, upon the conclusion of the argument on behalf of the State, the court charged the jury orally as follows:

CHARGE TO JURY

GENTLEMEN OF THE JURY: The indictment in this case charges nine defendants jointly, I believe, with the offense of rape; only five are on trial before you at this time, that is Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery. The others are not on trial before you at this time, only the five I have named.

The State charges that these defendants, together with others, some time ago, while on a freight train passing through this county, that they forcibly ravished Victoria Price a woman, against the peace and dignity of the State of Alabama.

In answer to this indictment, gentlemen of the jury, the defendants, each of them, plead not guilty. That puts the burden of proof on the State to satisfy you of the matters [fol. 43] set out and the charges made in this indictment, beyond a reasonable doubt, before you can convict these defendants, or any of them. Our law sets out what it takes to constitute rape, gentlemen of the jury, and it is as follows:

"To sustain an indictment for rape proof of actual penetration is sufficient when the act is shown to have been committed forcibly against the consent of the person assaulted." Rape, in short, is where carnal knowledge is performed by a male against a female, or on a female when it is done forcibly and against her consent, then, under our law, gentlemen of the jury, that is rape.

The state charges that these defendants, as I stated to you a while agao, in company with several others, went into a freight car that was a part of a train going through this county, sometime ago where this prosecutrix was, together with another girl, and that these defendants there in conjunction together forcibly and against the will of this Victoria Price had intercourse with her; insists that while one was having intercourse forcibly and against her will, that these others were also in connection there with them having intercourse at the same time, or that they aided and abetted each other in the performance of that offense.

As I said awhile ago, the defendants plead not guilty, and that puts the burden of proof on the State, of course, to convince you of their guilt beyond a reasonable doubt, before they can be convicted. If one is guilty, or if two or three are guilty, and the others are not, were not there aiding and abetting and helping the others to commit the offense, then they would not be guilty.

How that was, gentlemen of the jury, is for you to say and for you to pass on. If they were all there aiding and abetting each other in the performance of that act, and it was committed, and if it was committed by them, or either of them, and they were all together aiding and assisting in the commission of the crime, then they would all be equally guilty, whether they all had intercourse or not. If, however, any one of them, or any of them, or several of them, took no part, did not aid or assist others in the commission of the offense, did not have anything to do with the girls themselves, made no assault on them, or have anything to do with them, the fact if they were there if they were not there for the purpose of aiding or assisting in the offense, or having carnal knowledge of these women, of course, they would not be guilty. How that is, gentlemen of the jury, is for you to settle.

[fol. 44] If a man is guilty, and you are convinced of it beyond a reasonable doubt, then it would be your duty to so find. If, from the testimony, you are not convinced of the defendants' guilt, or any portion of them, then it would be your duty to acquit them. In other words, gentlemen of the jury, it is a question for you to settle.

The testimony comes to you, and you are the sole judges of it; you have heard the witnesses, the parties, and the defendants testify; you have seen them on the witness stand, and you take their testimony and weigh it, says our law, in the light of the interest of the parties or the lack of it, their reason for knowing or not knowing the facts about which they testify, and from all that, gentlemen of the jury, take the testimony and revolve it in your minds when you get to your jury room and endeavor to do what is right and just between the State on one side and the defendants on the other, and let your oaths as jurors bind you in the performance of your duty in this case.

As I said to you before, gentlemen of the jury, this is a matter in which I have nothing to say; it would be improper for me to intimate in the slightest what I think of the testimony or the testimony of any witness, or any part of it; that is improper on my part. You are the sole judges of the testimony from start to finish, and you take this case and you do what you think is right and proper as good, law-abiding citizens.

If the defendants are guilty, and you are convinced of it beyond a reasonable doubt, it is your duty to return a verdict to that effect.

If they are not guilty, it is equally your duty to acquit them.

Every man, gentlemen of the jury, comes into court with the presumption of innocence in his favor, and these five defendants on trial before you now come into this court with the presumption of innocence in their favor, and that presumption remains with them throughout the trial of this case and till you are convinced from the testimony of their guilt beyond a reasonable doubt. Not beyond every doubt, but beyond all reasonable doubt, gentlemen of the jury, is the rule.

Now, you take the case and take the testimony and go to your room and do what is right and just between the State, as I said to you a while ago, and these defendants.

Gentlemen of the jury, under our law, — is punishable by death or by imprisonment in the penitentiary of this State for not less than ten years. The indictment, gentlemen of [fol. 45] the jury, by implication of *of* law also covers the lesser degree of an assault, or of an assault with intent to rape. If you are not convinced of the defendants' guilt of the higher offense you may, under this indictment, and it is my duty to outline and tell you this, the law is that you may find them guilty of an assault with intent to rape, or find them guilty of an assault and battery. The punishment for an assault with intent to rape is not less than two or more than twenty years, and for an assault and battery, a fine of not more than five hundred dollars.

The form of your verdict, gentlemen of the jury, I will give you the forms in the respective offenses charged and covered by this indictment.

If you find them guilty of the higher offense, as charged in the indictment, this is the form of your verdict: "We, the jury, find the defendants guilty of rape, as charged in the indictment, and we fix their punishment at death or at imprisonment in the penitentiary for"—so long, not less than ten years. If one is guilty, or more than one is guilty, of the higher offense, and the others are not guilty, from the testimony in your judgment beyond a reasonable doubt, why, then you may find them guilty of whatever offense in your judgment is proven beyond a reasonable doubt. The punishment may be the same for all, or it may be different for the different defendants; that is another matter that comes to you to settle. You may find them all guilty of the higher offense, and you may fix their punishment at the same, or you may fix the punishment differently for each one of them; that is for you to settle.

The same in the next offense of an assault with intent to rape.

The punishment, gentlemen of the jury, you have nothing to do with that; you may find some guilty of the higher offense, and some guilty of the lower offense of an assault with intent to rape, or in that you may find some guilty of the higher offense and some of the lower offense, and some of the other charges of assault and battery. Gentlemen of the jury, if they are not guilty of any of the charges under this testimony, if you are not convinced of it beyond a reasonable doubt, then they are not guilty, and the form of your verdict is: "We, the jury, find the defendants not guilty."

I don't know whether I gave you the forms or not: "We, the jury, find the defendants guilty of rape, as charged in the indictment, and we fix their punishment at death or at imprisonment in the penitentiary for"—any number of years, not less than ten.

[fol. 46] Under the second charge I outlined to you, or the second offense of assault with intent to rape, it is: "We, the jury, find the defendants guilty of an assault with intent to rape, as charged in the indictment, the defendant or defendants," or "We, the jury, find the defendants guilty of an assault and battery, as charged in the indictment, and assess a fine against them of"—so much, or "We, the jury, find the defendants not guilty".

It means you may find there is a scale; you have five defendants on trial before you; if you don't find a verdict as to all for the same thing, then you designate which defendant for this or for that offense; or, in other words, if you find a different verdict as to some and different as to other-, then you state: "We, the jury, find the defendant, so and so, guilty of, so and so, and the defendant, so and so (naming them) and the offense, so and so, then it would take a separate verdict: "We, the jury, find the defendant, so and so (naming him) guilty of some offense I have outlined to you, and fix his punishment at''—whatever it is; it is for you to say, gentlemen.

Gentlemen, that is this case.

Thereupon, on the 9th day of April, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a motion to set aside the verdict and to grant the defendants a new trial, which said motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

EUGENE WILLIAMS, OLIN MONTGOMERY, ANDY WRIGHT, OZIE POWELL, WILLIE ROBERSON

MOTION FOR NEW TRIAL

Comes the defendants and moves the court to set aside the verdict of conviction in this cause for that:

1st. The Court was in error in refusing to grant the petition of defendants asking for a change of venue and removing this cause to another county.

2nd. The defendants allege that before this trial came the jurors before whom they were tried were around and about the courtyard at the time the jury reported the death sentence in the case of Clarence Norris and Charlie Weems. That at same time of said report of said jury there occurred [fol. 47] a tremendous demonstration in the court room loud enough to be heard a block away. That immediately the same demonstration by clapping of hands and yells occurred on the outside of the court room and in the court house yard where the jurors who tried the defendants could have and did hear it. That such conduct was liable to have influenced the jury in this cause.

Rody & Moody.

[File endorsement omitted.]

On the 6th day of May, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court an amendment to the foregoing motion for new trial, which said amended motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

EUGENE WILLIAMS, OLIN MONTGOMERY, ANDY WRIGHT, OZIE POWELL, WILLIE ROBERSON, Defendants

AMENDED MOTION FOR NEW TRIAL

Comes the defendants named in the above styled cause, Eugene Williams, Olin Montgomery, Andy Wright and Willie Roberson, by their attorneys and move the court to set aside the verdict of the jury and to grant them a new trial and for cause of new trial assigns the following reasons and causes separately and severally:

1

Because the court erred in refusing to grant the petition of the defendants asking for a change of venue and removing this cause to another county.

2nd

Because the defendants allege that before this trial came before whom they were tried were around and about the court yards at the time the jury reported the death sentences in the case of Clarence Norris and Charlie Weems; that at same time of said report of said jury there occurred a tremendous demonstration in the Court room loud enough to be heard a block away; that immediately the same demonstration by clapping of the hands and yells occurred on the outside of the court room and in the court house yard where jurors who tried the defendants could have and did hear it. That such conduct was liable to have influenced the jury in this case.

[fol. 48] 3rd

That there is no evidence to support the verdict of the jury and the evidence preponderates against the verdict of the jury in this case.

4th

That a new trial should be granted because the defendants were not given a fair and an impartial trial as contemplated by the Constitution of the State of Alabama, and the laws of the State of Alabama in such cases made and provided. Section 6 of the Constitution of the State of Alabama provides, "That in all criminal prosecutions, the accused has a right to be heard by himself and counselor either; nor be deprived of life, liberty or property except by due process of law; etc. etc."

5th

A new trial ought to be granted because the rights of the defendants under the Fourteenth Amendment to the Constitution of the United States which reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of the United States; not shall any state deprive any person of life, liberty, or property, without due process of law," and these defendants are about to be deprived of their lives in violation of their rights under this provision of the Constitution because they were not given a fair and an impartial trial before a fair and impartial jury, free from excitement, free from indignation, and free from personal demonstrations against the defendants, and that such a demonstration occurred only the day before these defendants were placed on trial and while they were in the court house awaiting trial in this case, when the jury reported its verdict in the case against Norris and Weems.

6th

A new trial should be granted because the court failed to interrogate the jurors as to whether or not they held racial prejudice against the defendant on the ground that they were negroes, and the court should have expalined to the jury, that the defendants held certain legal rights under the Constitution of Alabama to sit on juries as a matter of law, and that while all negroes had been excluded from the jury box in Jackson County and none were summoned to sit on the jury trying the defendants, that equal and exact justice should be done to all persons in court irrespective of the race, color, creed, and irrespective of the charge made against them. The defendants' rights were violated in this regard, and this was error.

[fol. 49] 7th

A new trial should have been granted because the Court refused to continue this case, on application of the defendants at the time it was called for trial.

8th

A new trial ought to be granted because the punishment imposed upon these defendants, in view of their ages, is too harsh, cruel and inhuman.

9th

A new trial ought to be granted because they were not given reasonable time to engage attorneys and to prepare their cases for trial, and in this way they were denied their legal rights to a fair and an impartial trial before an unbiased jury where they could present their evidence and show their innocence of the charges made against them.

10th

A new trial ought to be granted because of the fact that it was necessary to call out the militia officers and men in order to guard the court house to prevent violence towards the defendants and to preserve order at the trial, with machine guns and rifles, such weapons as are used in warfare.

11th

A new trial should be granted because the court failed to grant a special venire or special jury on motion of their attorneys when the case was called for trial.

12th

A new trial should be granted because of the matters set out in Exhibit No. 1, attached hereto, containing the testimony and the proceeding preliminary to the trial of Clarence Norris and Charlie Weems, with the motion for a change of venue and for a continuance and for a special venire, which proceedings and testimony is made a part hereof as fully as if copied herein, and is desired to be made a part of this motion with the same force and effect as if set out and copied here in full.

G. W. Chamlee, Attorney.

EXHIBIT NO. 1

To motion for New Trial in Case State of Ala. vs. Eugene Williams, Olin Montgomery, Andy Wright, Ozie Powell, and Willie Roberson

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION, 1931

[fol. 50] STATE OF ALABAMA

vs.

CHARLIE WEEMS and CLARENCE NORRIS, alias CLARENCE MORRIS

Appearances:

H. G. Bailey and Proctor & Snodgrass Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this the 9th day of April, 1931, before his Honor, A. E. Hawkins, Judge presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson et al., what says the State?

Mr. Bailey: We are ready if the Court please.

Mr. Roddy: If the Court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as your Honor knows, I was here several days ago and appears again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint, but, I would not appoint counsel if you are appearing for them, that is the only thing I am interested in—I *would* to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case. I would like to appear along with counsel your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it——

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the curcumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for [fol. 51] the purpose of arraigning the defendants and then of course I anticipated them to help if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of your Honor.

The Court: Of course I give you that right; well are you all willing to assist?

Mr. Moody: Your honor appointed us all and we have been proceeeing along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet, of course if Your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case, yet did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint—to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the Court appointing anybody, if they haven't counsel of course I think it is up to the Court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and I certainly haven't any money to pay them and no body I am interested in had me to come down here and has put up any fund of money to come down here and pay counsel. If they should do it I would be glad to [fol. 52] turn it over to counsel but I am here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it. I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned if I represent these defendants it will be from a high sense of duty I owe to the State and to the Court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to do what I could for the Court if the Court saw proper to appoint me.

The Court: I understand your situation Mr. Parks, just as an officer of the Court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it. I am interested to that extent.

The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see Mr. Roddy, how I can make a qualified appointment or a limited appointment, of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in any thing I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if——

[fol. 53] Mr. Moody: I am willing to do that for him as a member of the bar. I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment I met Mr. Roddy and had a talk with him and I gathered from Mr. Roddy that he would be employed in the case and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case and I recognized the principle involved and the fact that I took it for granted that Mr. Roddy would be here as employed counsel and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I though- under the circumstances I was. I am not trying to shirk my duty, and I know my duty is whatever the Court says about these matters but I did accept employment on the side of the State and have conferred with the Solicitor with reference to matters pertaining to the trial of the case and I think it is due the Court, I was not trying to shirk my duty whatever and I want the court to understand my attitude in the matter, I am ready to obey any order of the court.

The Court: Of course that is a matter with counsel, I know nothing about those affairs.

Mr. Proctor: I wanted the Court to understand why it was I agreed to become assisted with counsel for the State, thinking they had counsel I accepted employment on this side, thinking of course they had counsel and I would be relieved from that duty, and I have been conferring with the deputy solicitor about matters pertaining to the trial. I am ready to do whatever the Court thinks is proper thing to do.

The Court: I will leave that with the attorney interested Mr. Proctor because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me and I am willing to appear with their assistance they will go ahead with me in trial of these cases.

The Court: All right, now what says the defendant.

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue, shall I pass it to your honor?

[fol. 54] The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your honor please, while the Solicitor is reading that I wish to call the Court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have reasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue I think in the first place comes too late.

The Court: I would not require you of course—I will give you time to answer it.

Mr. Bailey: That is the first ground. If your Honor permits the filing of it I move to strike it because it is nothing except conclusions there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no petition concerning this newspaper article, no affidavit attached and no witnesses in support of this. Now, we first object to the filing and the consideration of it. If your Honor permits them to file it we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time Solicitor, I know the circumstances some time but I expect under the circumstances that is proper.

Mr. Bailey: Then, we move to strike it because the substance of it is setting out a mere conclusion; the proof even of a newspaper article alone is not sufficient, there is no affidavit attached in support of it. Now your Honor might permit me to offer testimony on it but we move to strike it and to demur to it.

Mr. Roddy: Your Honor, I might suggest that the petition does not only base conclusions but it tells facts about troops being here, and your Honor please we offer the Sheriff at this time to show the reason for it and why. The [fol. 55] matters set out in the petition itself.

The Court: Well, do you want time to answer it—have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff if the Court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes sir.

M. L. Wann examined as witness on defendant's petition:

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this County?
A. Yes sir.
Q. Did you deem it necessary to call out a unit of the National Guard to bring these defendants to court to trial?

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I see any guns there or anything like that and I did not hear any threats but——
Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court.
Mr. Wann: Today?
Q. Yes, sir.
A. Yes, sir I did.
Q. Did you when they were brought here several days ago?
A. Yes, sir.
Q. As Sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?
A. Yes, sir, I thought so.
Q. That is on account of the feeling that existed against these defendants?
A. Not only here but people all over the county——
Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?
A. Yes sir.

The Court: Is that all?
Mr. Roddy: That is all.

Cross-examination:

Examined by Mr. Proctor:

[fol. 56] Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.
The Court: He has a right to lead, Mr. Roddy.

A. Yes sir.
Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse have you?

A. No sir.

Q. Is it your idea as sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. Not any higher here than in any adjoining coun*it*es.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No sir.

Q. Is it your judgm*t*nt that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the population of this county if they could have a fair and impartial trial in this case in Jackson County.

A. I think they can.

Q. Is that your judgment?

A. Yes sir.

Q. You have heard nothing of any threats or any thing in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes sir.

Mr. Proctor: That is all.

Redirect examination:

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the courthouse?

[fol. 57] A. Yes sir.

Q. And there is a great throng around the courthouse right now that would come in if you did not have the troops?

A. Yes sir, they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them, there are several from Madison and Marshall and De Kalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No sir, that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir, I thought it was duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

Q. Have you have five units of the state militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Moody: I might ask Major Starnes.

Major JOE STARNES, witness for Defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defendants?

A. 107 enlisted men.

Q. How many units of National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

[fol. 58] A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9 P. M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

Q. Now your units of the National Guard have protected these men and have been with them on every appearance they have made in this court house?

A. That is correct.

Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes sir.

Q. After these men were arrested when did you first bring them back?

A. On Tuesday of the past week is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?
A. That is right.
[fol. 59] Q. Then when did you bring them back?
A. Brought them back and arrived here at 5:15 this morning.
Q. You have had them here twice from Gadsden?
A. That is right.
Q. You bring them here and then carry them back?
A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here of course under orders from the Governor?
A. Yes sir.
Q. And you have been here under his orders ever since?
A. That is correct.
Q. You say you made how many trips here from Gadsden?
A. This is the third trip.
Q. In your trips over to Scottsboro in Jackson County and your association with the citizens in this county and other counties, I will ask you if you have heard any threats made against any of these defendants?
A. I have not.
Q. From your knowledge of the situation gained from these trips over here I will ask you if it is your judgment these defe-dants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?
A. I think so.
Q. Have you seen any demonstration or attempted demonstration toward any of these defendants?
A. Absolutely none; a good deal of curiosity but not hostile demonstration.
Q. Your judgment the crowd here was here out of curiosity?
A. That is right.
Q. And not as a hostile demonstration toward these defendants?
A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all your Honor.

The Court: Anything further for the State?

[fol. 60] Mr. Bailey: No, sir, we don't care to offer anything further; now was our objection to the newspaper article noted?

The Court: Well, the motion is overruled gentlemen.

Mr. Roddy: We want to except to your Honor's ruling.

The Court: Yes, I will give you an exception—let the motion be filed Mr. Clerk—I give you an exception to it Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called, we have some we are not sure about.

The Court: Call the State witnesses Mr. Clerk.

(Witnesses called by the clerk for the State.)

Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages to the court.

The Court: We will see about it when we get to it.

Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, sir, we don't demand a severance.

The Court: No severance is demanded—now, do you want to try them all?

Mr. Bailey: The state demands a severance and we will try under the first joint indictment Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the Court please I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the Court.

The Court: I understand but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think if you can you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

[fol. 61] The Court: I understand but I don't want to take that up now, I want to proceed with the others.

Mr. Bailey: As long as this age is not presented to the Court we want to proceed.

Mr. Roddy: Before these boys are placed on trial we would like for your Honor to pass on that.

The Court: I will pass on that but we can do that possibly some night when we are not engaged up here with the jury, of course, that is a matter if it is raised it comes up to be passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right—call your witnesses.

(Witnesses called by the clerk for the defendants.)

Mr. Roddy: We want our witness if the Court please or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. Amos, he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody if the Court please but we want our witnesses here, all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos of course, I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for these witnesses?

Mr. Roddy: Yes, sir, we would like to get them here, if we cannot get them here then we would like to have a showing for them.

The Court: I expect everyone of them on a telephone call would come,—Sheriff, at the noon hour you call these witnesses and I expect they will come right on.

(Court adjourned for noon recess.)

[fol. 62] The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here and if your Honor will grant me a few minutes I might simplify these matters, I want to be of all the help I can with the Court and every one concerned but there are some very material facts in the case, I have no motive in this world in appearing down here except to get the absolute truth about this matter and if your Honor will indulge me a few minutes——

All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know your Honor please about our witnesses?

The Court: What about the witnesses Mr. Sheriff—all right gentlemen, if we don't get the witnesses here I will allow you a showing for them, is that all right?

Mr. Roddy: Yes, sir.

Mr. Bailey: Subject of course to legal objections.

The Court: All right sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the Court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under the rule, except as to the other defendants not on trial excused from the rule by the Court.

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION, 1931

No. 2402

STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

[fol. 63] EXHIBIT TO AMEND MOTION FOR A NEW TRIAL, SECTION 12—Above

Appearances:

H. G. Bailey and Proctor & Snodgrass, Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury, when the following proceedings were had and done, to-wit:

The Court: All right, the first case Solicitor is the case of State vs. Haywood Patterson, et als., what says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these deefndants but people who are interested in them have spoken to me about it and as Your Honor knows I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them that is the only thing I am interested in—I would like to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel.

Mr. Roddy: I would not like for Your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

[fol. 64] Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Roddy: I see his situation of course and I have not run out of anything yet, of course if Your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it.

Most of the bar have been down and conferred with these defendants in this case, they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the court appointing anybody, if they haven't counsel of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me *on* come down here and pay counsel. If they should do it I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at [fol. 65] it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go — these counsel. I don't know what they will pay and cannot make any statement about it, I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants it will be from a high sense of duty I owe to the State and to the court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it, I am interested to that extent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or limited appointment; of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I could not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar, I will go ahead and help do anything I can do.

The Court: All right.

[fol. 66] On the 6th day of May, 1931, the defendants, separately and severally filed in said cause a petition, which said petition is in words and figures as follows, to-wit:

No. —

IN CIRCUIT COURT OF JACKSON COUNTY

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als., Defendants

PETITION OF CLAUDE PATTERSON ET ALS.

To the Honorable E. A. Hawkins, Judge of the Circuit Court of Jackson County, Alabama:

The petitioners, Claude Patterson, Ada Wright, and Mamie Williams most respectfully show unto the court that Claude Patterson is the father of Haywood Patterson, and that Ada Wright is the mother of Roy Wright and Andy Wright, and that Mamie Williams is the mother of Eugene Williams and that these petitioners employed George W. Chamlee, attorney-at-law, of Chattanooga, Tennessee, to represent their boys in the case of the State of Alabama v. Haywood Patterson et al., pending in the Circuit Court of Jackson County, Alabama, and which they desire to be appealed from that court to the Supreme Court of the State of Alabama, in the event a new trial is not granted Haywood Patterson, and if a new trial is granted for him, the petitioners, Ada Wright and Mamie Williams desire that the case against their boys be appealed to the Supreme Court of the State of Alabama.

Claude Patterson shows unto the court that George W. Chamlee had been his attorney in legal matters several years ago and recently in the early part of 1931, Claude Patterson employed Mr. Chamlee, as his attorney to defend a case against his son, Julian Patterson of Chattanooga, Tennessee, and that they had made a contract with Mr. Chamlee to represent their boys in these cases at Scottsboro, Alabama, and also on appeal from the case at Scottsboro, Alabama, and that they had not employed any other attorney and they had not authorized any other attorney to present them, or to bind them in the premises.

They further show unto the court that since their boys have been arrested that they had only had one opportunity of visiting their boys and that was in the City of Birmingham, Alabama, and that their boys told them that they had signed a request in the form of a contract asking Mr. Chamlee to represent all of them on appeal in their cases, and that all of the defendants in Birmingham jail stated to these petitioners that they had likewise signed such contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to *to* make any reason- [fol. 67] able investigation of the cases, and the defendants were all in company with each other in their joint cells in jail and no opportunity to write or take notes of what each one had to say about his case and no opportunity for a private conversation whatever with the defendants.

Petitioners carried their attorneys with them and was informed that if their attorney had not been with them that they could not have seen their boys and that they would soon be removed from Birmingham to Kilby prison at or near Montgomery, Alabama. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Alabama, and on April 29th, 1931, their attorney communicated with the Warden of Kilby Prison and was informed that no one could see the defendants except upon written order of -his Honorable Court and for them not to come to Montgomery, Alabama, with the expectation of seeing them without an order from this Honorable Court.

Petitioners are advised that important evidence, touching the merits of the cases of these defendants, has been discovered since the trial and that in order for newly discovered evidence to be presented under the laws of the State of Alabama, that the defendant must make an affidavit or show a good cause why he did not have the evidence on the regular trial and give a meritorious reason for not producing it when he was tried before it would be available on the hearing of the motion for a new trial.

Petitioners further show unto the court that the defendants were arrested on the 25th day of March, 1931, and were indicted in the last days of March, 1931, and the first days of April, 1931, and were put on trial about the 6th, 7th, and 8th and 9th of April, 1931, and that these petitioners were not permitted to see them prior to the time of the trial and they have only seen them one time since the trial. They are advised that under the laws of the State of Alabama that the parents of children under twenty one years of age, when in company with responsible and reputable counsel, have a lawful right to conversation with their children separately and apart from other persons, one at a time, for the purpose of preparing the cases for trial.

These petitioners have not read the transcripts of the records in these cases and do not know the merits of the testimony introduced on the trial, but have been informed that there was some antagonistic interest involved between certain of the defendants and that separate trials ought to [fol. 68] have been had by some of them in order to avoid conflicting interest prejudicing the case or cases against others.

These petitioners are all colored people and they were afraid to visit Scottsboro at the time of the trial and are afraid to visit Scottsboro now, and if the defendant, Haywood Patterson, has to be brought to court when the motion for a new trial is heard, they would petition that the hearing be had at Montgomery, Alabama, or at Kilby Prison so that no risk of violence would be assumed and that they might attend the hearing in person when the motion for a new trial was heard.

Petitioners further show and represent that they are advised, that in view of new facts and newly discovered evidence, that has been learned of since the trial, that the hearing of a motion for a new trial ought to be continued from May 6th, 1931 until some later date, in order to prepare the motion for a new trial to be presented to Your Honor.

Petitioners especially appeal to this Honorable Court to afford them and their counsel every reasonable opportunity to present such evidence as they may have, or may obtain on the hearing of the motion for a new trial and to afford them an opportunity of presenting additional affidavits, from witnesses of whom they have heard, and which said witnesses one of whom is reported to be at Paint Rock claims that when Victoria Price first got off the train, she was asked if any of the defendants had done anything to her, and that she said they had not.

Affiants desire to file this petition as parents and next friend of their children, and especially does Claude Patterson desire to file it on behalf of Haywood Patterson, whose motion for a new trial has been set for hearing May 6, 1931, and that as Haywood Patterson is in Kilby Prison and as the keeper of that prison has informed G. W. Chamlee, attorney, that he could only see Haywood Patterson upon a written order from the Judge of the Circuit Court of Jackson County, that this affiant desires to file that affidavit, to be considered on the motion as a reason why the affidavit of Haywood Patterson is not filed herein.

Affiant Claude Patterson, further makes oath that Haywood Patterson told him that threats were made against him when he was arrested to lynch him, and that all of the defendants were scared, and if it had not been for the military company coming he believes that all of them would have been killed.

Affiant further stated that Haywood Patterson told him that when the jury reported in the case against Weems and [fol. 69] Norris, and gave them a verdict of death, that the people in the Court house clapped their hands and some of them hollowed, and a few people left the court house and went outside and in a minute or two the crowd outside commenced hollowing and that there was great demonstration out in the streets of Scottsboro.

Affiant further states that he was afraid to go to Scottsboro and was afraid to go to Gadsden, and he was utter helpless, at and before the trial, as far as rendering any assistance to his boy was concerned or getting him any witnesses.

Ada Wright and Mamie Williams join in this affidavit, and say their boys told them about the demonstration in the court house when Norris and Weems were convicted, and about the threats against their lives.

Affiants further-state that they are advised that there are a number of witnesses who saw the train leave Chattanooga and going by Lookout Mountain where it had to go through a tunnel and that there was about twenty or twenty five negroes on the train besides the white girls and boys, and that they are advised that the trouble on the train was provoked by the white boys and that after the alleged fight that about ten negro boys got off the train between the time of the alleged fight and the reaching of the station at Paint Rock, and that these parties are evading giving any information about it because they are afraid of the consequences of such disclosures.

Affiants further state that they have talked to a number of people in Chattanooga who claim to know Victoria Price and Ruby Bates and who say that they were women of bad character and reputation and unworthy of belief on their oaths in a court of justice.

They will file with this petition such affidavits as they can get and they hereby make application to this Honorable Court for permission to file other affidavits, including affidavits of the defendants, in support of the motion for a new trial in the case against Haywood Patterson and such other evidence as they may be able to obtain material thereto.

The premises considered, the petitioners pray that this Honorable Court will make an order addressed to the Warden of the State Prison of the State of Alabama at Kilby Prison at Montgomery, Alabama, directing or permitting that counsel for Haywood Patterson et al. be permitted to confer with them in private so as to prepare their legal evidence in the motion for a new trial of Haywood Patter-[fol. 70] son, and for the appeal of the cases against the other defendants who have been tried.

II

That an order be made authorizing the Warden of Kilby Prison to permit the parents and relatives of the defendants to see the defendants in the presence of the Deputy Warden, or guards, such as may be provided by the rules of the prison, so that the petitioners will not be denied the right to visit their children while they are confined in Kilby Prison awaiting the execution of the death sentence.

III

That the hearing of the motion for a new trial of Haywood Patterson set for May 6th, 1931, at Scottsboro, Alabama, be continued for thirty days, or for some reasonable time, and that it be heard at Montgomery, Alabama, or if the defendant is not required to be present at the hearing, that he be granted time to file additional affidavits while the State is making its reply to such as he has filed.

(Signed) G. W. Chamlee, Attorneys.

Duly sworn to by Claude Patterson et al. Jurat omitted in printing.

[File endorsement omitted.]

On this the 19th day of May, 1931, the defendants separately and severally filed in said cause, in support of their motion for new trial, the following affidavit:

IN CIRCUIT COURT OF JACKSON COUNTY, ALABAMA

No. 2402 and 2404

THE STATE OF ALABAMA

vs.

[fol. 71] HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE MONTGOMERY, ANDY WRIGHT, OLEN MONTGOMERY, EUGENE WILLIAMS

AFFIDAVIT OF HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE ROBERTSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAM-

The undersigned affiiants make oath in due form of law that they were defendants in the above styled cause, tried at the special session of the Circuit Court of Jackson County in April, 1931, at Scottsboro, Alabama.

Affiants further state that when the court was organized and their cases called for trial, that they did not know who would be their counsel and that they had been in jail ever since they were arrested, March 25th, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinfolks or friends and had no chance to procure witness and no opportunity to make bond or to communicate with friends on the outside of the jail.

They further show that there was a discussion between the trial judge and Mr. S. R. Roddy and Mr. Milo Moody and some other attorneys about the cases of these defendants and a copy of that discussion taken from the official record will be filed and marked Exhibit #1 and made a part of this affidavit as fully as if copied and set out herein.

That the case against Clarence Norris and Charlie Weems was tried first and prior to the trial that the Governor of the State of Alabama had provided military forces with 107 men and officers with six or eight machine guns and rifles commonly used in military warfare to guard the courthouse and jail and to guard these defendants, prior and during the trial and these military officers had surrounded the courthouse and were keeping the hostile mob or at least keeping away from the courthouse persons that had no business in the courthouse and who might wish to do violence to the affiant or someone of the defendants and while these guards were on duty the case against Clarence Norris and Charlie Weems was tried and there was great excitement prevailing throughout the county and in Scottsboro at the time and when the jury reported in this case, the case against Haywood Patterson had been started and his jury was in the jury room adjoining the court room when the jury in the Clarence Norris and Charlie Weems case made its report imposing death penalty, and thereupon there was a demonstration in the courthouse by citizens clapping their hands and hollowing and shouting and soon thereafter a demonstration broke out on the streets [fol. 72] of Scottsboro and not long thereafter the Hosiery Mill band came into the business district apparently celebrating the victory of the State and paraded through the public street and long in front of the courthouse making music for the entertainment of the crowds and at a time when the whole atmosphere was surcharged with excitement and this demonstration was carried on in the presence and hearing of jurors who had to try the third case composed of Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams and the excitement which had been produced by the seriousness and enormity of the charge made against the defendants and added to this the newspaper and press circulated stories through

Jackson County which were generally read and accepted as the facts, when in truth these stories were, many of them, utterly untrue and when these defendants had no newspaper to print anything for them and when they had no attorney to write or publish anything on their side or in their defense, or showing that they were innocent and why their identity could be easily mistaken, but notwithstanding these disabilities and these unofortunate circumstances there was a hostile demonstration in the court room and a hostile demonstration through the streets and on the sidewalks in the town of Scottsboro and then a parade by the Hosiery Mill band apparently celebrating and felicitating the jurors upon their verdict and musical demonstration in cooperation with the demonstration put on by the citizens in the streets and on the sidewalk following the verdict in the case against Clarence Norris and Charlie Weems. The jurors who were summoned in the cases next to be tried were exposed to these demonstrations and celebrations, and the effect upon the jurors could not help but *to* adverse to the defendants then on trial and yet to be tried.

These demonstrations were produced because of high excitement in Jackson County, and that the people who had gathered at Scottsboro to witness these several trials had produced so much excitement that apparently a general holiday was being taken by the Hosiery Mill band so that at the most inopportune time for the interest of these defendants this Hosiery Mill band was parading the streets of Scottsboro and it is reported that they played (such pieces as "Hail, Hail, the Gang's All Here" and "There will be a hot time in the Old Town tonight"), but whatever it was and whether this band was innocent and appeared as a mere coincidence or whether it was purposely on the streets can make no difference because the effect on the jurors at that time trying Haywood Patterson and the next [fol. 73] jury later selected from the crowd that tried the other five defendants was adverse to them and manifestly to their disadvantage and detriment, and the fact that jurors were or might have been adversely affected by matters happening outside of the court room which adversely affected the interests of the defendants and adversely affected the defendants and necessarily denied to them a fair and impartial trial by free and unbiased and impartial jurors.

Affiants further state that because of the enormity of the charge in the first instance they were not given a fair trial. Second, that because they were negroes and paupers and locked in jail without an opportunity to confer with or employ counsel they were not given a fair trial. Third, that the alleged victim was a white woman. Fourth, publications in newspapers aver-ing that the proof of guilt was most po-itive and falsely alleging that some of the defendants or all of them had confessed their guilt, which was not true, but the public through Jackson County was made to believe that such were the facts, rendered an impartial jury impossible; the fact that the defendants were compelled to go to trial represented by attorneys, who by their own admission in open court, stated that they were not prepared and had made no preparation whatsoever, constituted a denial of due process to the defendants and prevented a fair and impartial trial; this is especially true because in fact the defendants were neither represented by counsel retained by them or any one on their behalf authorized to make such retainer, nor was such counsel appointed by the court as trial counsel, according to the record of pages one to eight of the Weems, Norris record annexed hereto and marked Exhibit 1, and made a part hereof, proves that so far as Mr. Roddy is concerned, he made no pretentions that he was retained as attorney for the defendants, and the record shows that he was not appointed as attorney for the defendants; he was, in fact, merely present as an observer by his own admission and made no pretentions at having prepared the case for trial, but sought a change of venue, and that the record shows Mr. Roddy was appointed for the purpose of arraignment only, and when Mr. Roddy appeared the court released all the members of the Scottsboro Bar after arraignment, and when the trial was about to start during the discussion Mr. Moody agreed to assist Mr. Roddy who was never employed and who appeared only by the courtesy of the court, and the defendants were never asked, according to [fol. 74] this record, their wishes or desires in the premises and yet the lives of all eight of them were at stake and were later demanded to the hands of a jury at a trial about to begin without an opportunity to tell their trial lawyer their separate defenses, and when forced into trial without witnesses and without an opportunity to secure any witnesses, and in a county hostile to their race and when there was no chance to communicate with the outside, to either parents, relatives or friends, and when they had no money and no one to advise them of their legal or constitutional rights and when they were overawed and intimidated and threatened by a mob of hostile citizens from the day they were arrested until after the sentence of death was pronounced upon them and because of their immature years and because seven of them can neither read nor write anything of consequence and are ignorant of the law and did not know how to prepare their case for trial or how to protect their rights or themselves from insult, embarrassment and intimidation and especially when a mob had gathered in Scottsboro after they were arrested and the Mayor and public officials had to make speeches to try to persuade the mob to adjourn and it was necessary for military forces to come to Scottsboro and to by force of arms dis*bu*rse this hostile and enraged gathering and to require them to leave the town of Scottsboro and from the county of Jackson the trial jury for all the defendants had to be selected and by reason of custom of long standing there was not one negro selected for the entire trial, throughout the whole county where a population of 30,000 people when a large number of negro land-owners were qualified jurors, or for jury service and members of the negro race; all of these indubitable and undisputable facts lead directly to the inevitable and the irresistible conclusion that these defendants did not have and can never have a fair and an impartial trial in Jackson County as they are entitled to have under the law of the State of Alabama and under the law of the land.

Affiants further show that the trial was unfair because damaging evidence was admitted in the trial against some of them about Ruby Bates and they were not indicted or called upon to answer any charge about her and any testimony with reference to her should have been excluded and not considered by the court or jury under the indictment upon which they were tried.

Affiants further state that before reaching Paint Rock, Alabama, they did not leave the train because they were not guilty and had no motive or reason to run and they did [fol. 75] not run or make any attempt to leave the train or to get away, but a number of other negroes did leave the train and did get away and were never arrested.

Affiants are advised that the prosecuting witness, Victoria Price was a woman of bad reputation and bad character and that the defendants ought to have been permitted to prove on the trial that she was of bad character and bad reputation and the refusal of the court to permit her to be cross-examined on this subject was error and for which a new trial ought to be granted. See affidavits of Silas Johnson and others filed in his cause. Affiants are advised that newly discovered evidence touching the character and reputation of Victoria Price and Ruby Bates has been filed in this case and these affiants did not discover or know about this evidence and its importance until since the trial, but if they had known about it *they had known about it* they had no chance to have procured it and to produce it on the trial at Scottsboro to attend the trial and lived out of the State of Alabama where they could not be compelled to attend the trial by court process of this State.

Affiants are advised that there were no safeguards thrown around the jury prior to the starting of the trial in order to keep them free from contact with the population in general and that they were permitted to read hostile newspapers and to witness the demonstration in the Courthouse and on the streets of Scottsboro and to witness the parade of the Hosiery Mill band through the streets when Clarence Norris and Charlie Weems were convicted and that there was no effort on the part of military authorities to keep jurors, not yet placed on the jury separate and apart from the people in general and these jurors were exposed to excitement, hostilic and prejudicial newspaper articles combined with public feeling surcharged with excitement produced a situation impossible of correction and the result of which adversely affected the defendant-, confused counsel who tried to represent them, overawed the men who sit on the jury and rendered an impartial, orderly, quiet, judicial hearing impossible and as a direct result thereof these affiants are about to be deprived of their lives without due process of law and in violation of the most sacred constitutional rights ever provided for in this State and under the laws of the land.

Affiants made application for a change of venue and in their application swore they could not get a fair trial and the events which happened during these several trials con- [fol. 76] firmed and verify that contention and the trial should have been removed from Scottsboro to some other county as requested in their application for a change of venue.

Affiants are advised that the trial judge did not question the jurors who tried these defendants on the subject as to whether or not they held racial prejudice and whether or not they would give a negro the same fair, patient, impartial hearing that they would give to a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsboro there was no man on any of these juries under all the excitement that was qualified to meet the legal requirements of an impartial uninfluenced and unbiased juror as provided for by the laws of the State of Alabama and the laws of the land.

Affiants further state that they were threatened with lynching, terrified by mob and confused and embarrassed through the trial by hostile words, threats and public demonstrations and the jury which tried them knew or had a chance to know and were exposed to these illegal influences, and their minds influenced by an atmosphere surcharged with hositility, partiality, prejudice, caprice and rancor against the defendants and their lives were demanded as a sacrifice therefor without due process of law, then they were not guilty of the charge contained in the indictment against them.

The defendants demanded a special venire or a special list of jurors for their separate trial and this request was refused and denied and the defendants had to go to trial without the rights to select or to be consulted about selecting the jury to try these cases.

These defendants did not challenge any juror and did not know that they had a right to challenge jurors.

The indictment in these cases fail to state sufficient facts in that no time or place or a statement of circumstances were set out giving the facts constitution the alleged offense so as to enable the defendants to properly prepare for trial and to be protected against double jeopardy. There was a number of white boys on this train who were available as witnesses for the State and were not introduced by the State and no reason given for not doing so and the name of one or more of them appeared on the indictment.

(Signed) Olen Montgomery. (Signed) Willie (his X mark) Robertson. (Signed) Charlie (his X mark) Means. (Signed) Eugene (his X mark) Williams. (Signed) Raymond (his X mark) Patterson. (Signed) Andy (his X mark) Wright. [fol. 77] (Signed) Clarence (his X mark) Norris. Ozie (his X mark) Powell.

Subscribed and sworn to before me on this 15th day of May, 1931. (Signed) U. L. Heustees, Notary Public. My commission expires Feb. 27th, 1935. (Seal.)

[File endorsement omitted.]

EXHIBIT NO. 1 TO AFFIDAVIT OF THE EIGHT DEFENDANTS

STATE

vs.

HAYWOOD PATTERSON et als.

Special Session, 1931

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

Appearances:

H. C. Bailey and Proctor & Snodgrass, attorneys for State.

Stephen W. Roddy and Milo Moody, attorneys for defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins, Judge presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of The State vs. Haywood Patterson, et als. What says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as Your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that; the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that Your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I would—to know if you appear for them?

[fol. 78] Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you ll willing to assist?

Mr. Moody: Your Honor appointed us all and we have een proceeding along every line we know about it under our Honor's appointment.

The Court: The only thing I am trying to do is, if counsel ppears for these defendants I don't want to impose on ou all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not un out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with . Most of the bar have been down and conferred with nese defendants in this case; they did not know what else do.

The Court: The thing, I did not want to impose on the embers of the bar if counsel unqualifiedly appears; if you l feel like Mr. Roddy is only interested in a limited way assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to npose on any member of the local bar if the defendants e represented by counsel.

The Court: That is what I was trying to ascertain, Mr. arks.

Mr. Parks: Of course, if they have counsel, I don't see e necessity of the court appointing anybody; if they iven't counsel, of course, I think it is up to the court to ppoint counsel to represent them.

ol. 79] The Court: I think you are right about it, Mr. rks, and that is the reason I was trying to get an expreson from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it; I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and ve only been called into it by people who are interested these boys from Chattanooga. Now, they have not given an opportunity to prepare the case and I am not faliar with the procedure in Alabama, but I merely came wn here as a friend of people who are interested and t as paid counsel, and I certainly haven't any money to y them and nobody I am interested in had me to come wn here has put up any fund of money to come down e and pay counsel. If they should do it, I would be d to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial, and I think the boys would be better off if I step entirely out of the case, according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it; I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court, and not to the defendants; I could not take the case for a fee, because I am not practicing in the general Court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath; that is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel; if he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that ex- [fol. 80] tent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if——

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case, and I recognize the principle involved, and the fact that I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk duty, and I know my duty is whatever the court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the court, I was not trying to shirk any duty whatever, and I want the court to understand my attitude in the matter; I am ready to obey any order of the court.

The Court: Of course, this is a matter with counsel; I know nothing about those affairs.

[fol. 81] Mr. Proctor: I wanted the court to understand why it was I agreed to become assisted with counsel for the State; thinking they had counsel, I accepted employment on this side, thinking of course, they had counsel, and I would be relieved from that duty, and I have been conferring with the Deputy Solicitor about matters pertaining to the trial. I am ready to do whatever the court thinks is the proper thing to do.

The Court: I will leave that with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear with their assurance they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue—Shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have seasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think, in the first place, comes too late.

The Court: I would not require you, of course, I will give you time to answer it.

Mr. Bailey: That is the first ground. If Your Honor permits the filing of it, I move to strike it because it is nothing except conclusions; there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper [fol. 82] article, and that is a conclusion pure and simple; there is no petition concerning that newspaper article, no affidavit attached, and no witness in support of this. Now, we first object to the filing and the consideration of it. If Your Honor permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time, Solicitors; I know the circumstances sometime but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion. The proof even of a newspaper article alone is not sufficient; there is no affidavit attached in support of it. Now, Your Honor might permit me to offer testimony on it, but we move to strike it and to demur to it.

Mr. Roddy: Your honor, I might suggest that the petition does not only base conclusions, but it tells facts about troops being here, and Your Honor, please, we offer the Sheriff at this time to show the reason for it and why,—the matters set out in the petition itself.

The Court: Well, do you want time to answer it? Have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff, if the court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes, sir.

M. D. Wann examined as witness on defendant' petition.

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this county?

A. Yes, sir.

Q. Did you deem it necessary to call out a unit of the National guard to bring these defendants to court to trial.

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I didn't see any guns there or anything like that, and I did not hear any threats, but——

Mr. Roddy: You did call this National Guard unit to accompany the prisoners in court?

Mr. Wann: Today?

[fol. 83] Q. Yes, sir?

A. Yes, sir; I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir; I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here, but people all over the county—

Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?

A. Yes, sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the g-ounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes, sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse, have you?

A. No, sir.

Q. Is it your idea as Sheriff of the county that the sentiment is no higher here than in any adjoining counites?

A. Not any higher here than in any adjoining counites.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No, sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

[fol. 84] Q. I will ask you whether or not this county,—if it is your judgment or opinion from association among the population of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think t-*ye* can.

Q. Is that your judgment?

A. Yes, sir.

Q. You have heard nothing of any threats or anything in the way of the population taking charge of the trials?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes, sir.

Mr. Proctor: That is all.

Redirect examination.

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the court house?

A. Yes, sir.

Q. And there is a great throng around this courthouse right now that would come in if you did not have the troops?

A. Yes, sir; they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them; there are several from Madison and Marshall and DeKalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes, sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No, sir; that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail, that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir; I thought it was duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understand Major Starnes, or five.

[fol. 85] Q. You have five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Roddy: I might ask Major Starnes.

Major Joe Starnes, witness for defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defedants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commission privates.

Q. How many officers?

A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from *my* two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9:00 P.M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro, you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

[fol. 86] Q. Now, your units of the National Guard have protected these men and have been with them on every appearance they have made in this courthouse?

A. That is correct.

Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes, sir.

Q. After these men were arrested, when did you first bring them back?

A. On Tuesday of the past week, is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?

A. That is right.

Q. Then when did you bring them back?

A. Brought them back and arrived here at 5:15 this morning.

Q. You have had them here twice from Gadsden?

A. That is right.

Q. You bring them here and then carry them back?

A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here, of course, under orders from the Governor?

A. Yes, sir.

Q. And you have been here under his orders ever since?

A. That is correct.

Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro, in Jackson County, and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants.

A. I have not.

[fol. 87] Q. From your knowledge of the situation, gained from these trips over here, I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

A. I think so.

Q. Have you seen any demonstration, or attempted demonstration, toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hostile demonstration.

Q. Your judgment that crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration twoard these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all, Your Honor.

The Court: Anything further for the State?

Mr. Bailey: No, sir, we don't care to offer anything further. Now, was our objection to the newspaper articles noted.

The Court: Well, the motion is overruled, gentlemen.

Mr. Roddy: We want to except to Your Honor's ruling.

The Court: Yes, I will give you an exception. Let the motion be filed Mr. Clerk—I will give you an exception to it Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called; we have some we are not sure about.

The Court: Call the State witness, Mr. Clerk.

(Witness called by the Clerk for the State.)

Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their agest to the court.

The Court: We will see about it when we get to it. What says the State?

[fol. 88] Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first, Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, we don't demand a severance.

The Court: No severance is demanded? Now, do you want to try them all?

Mr. Bailey: The state demands a severance, and we will try under the first joint indictment, Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the court please, I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is, yes sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

The Court: I understand, but I don't want to take that up now. I want to proceed with the others.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call the witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Rody: Yes, sir.

The Court: I expect it would not be right to attach Mr. Amos; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

The Clerk: Yes, sir.

[fol. 89] The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for these witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect every one of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out there and if Your Honor will grant me a few minutes, time, I might simplify these matters. I want to be of all the help I can with the court and everyone concerned, but there are some very material facts in the case; I have no motive in this world in appearing down here except to get the absolute truth in this matter, and if Your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know, your Honro please about our witnesses.

The Court: What about the witnesses, Mr. Sheriff? All right, gentlemen, if we don't get the witnesses here, I will allow you a showing for them. Is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject, of course, to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty. Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State [fol. 90] are put under the rule, except as to the other defendants not on trial excused from the rule by court.

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

On the 19th day of May, 1931, defendants separately and severally filed in said c-use, in support of their said motion for new trial the separate and several affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher, the joint affidavit of Henry Cokley, Susie Cokely, and Georgia Haley, and the affidavit of Percy Ricks, which said affidavits are in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY, ALABAMA

No. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF ROBERTA FEARY

The undersigned affiant makes oath in due form of law that she resides in the town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived and that Victoria Price often talked to and with *with* this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them. She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fear*sn*.

Subscribed and sworn to before me May 18, 1931.
(Signed) Lewis C. Colson, Notary Public. Hunts-
[fol. 91] ville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF BERTHA LOWE

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White who as affiant is told formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at times affiant would see them often and again she would not see them for a month *of* longer. She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as that is where she saw them, in negro section of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

Subscribed and sworn to before me, May 18, 1931. (Signed) Lewis C. Colson, Notary Public, County of ——, State of Alabama. My commission expires on the 1 day of May, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF WILLIE CRUTCHER

[fol. 92] The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the case of the State of Alabama v. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Willie Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Colson, Notary Public, Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

In Circuit Court of Jackson County

No-. 2402 and 2404

State of Alabama

vs.

Haywood Patterson et als.

Affidavit of Allen Crutcher

The undersigned affiant makes oath in due from of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the case of the State of Alabama v. Haywood Patterson, and eight other boys recently tried in this Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right [fol. 93] near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute and she told affiant that she was going to make a trip in last year from Huntsville, and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates and Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Allen Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Colson, Notary Public, Huntsville, County of Madison, Alabama, May 1, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON and EUGENE WILLIAMS et al.,
Defendants

AFFIDAVIT OF HENRY COKLE, SUSIE COKLE, AND GEORGIA HALEY

STATE OF GEORGIA,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9th, 1916, and that Eugene Williams her son, was born on December 6th, 1917.

These affiants further state that they heard about a boy named Eugene Williams being in trouble in Scottsboro, Alabama, but his age was reported as being 19 years old, and that they did not think it was Eugene Williams of [fol. 94] Chattanooga, Tennessee, son of Mamie Williams, and for that reason they did not send an affidavit about his age earlier than this time, and that this is the first they heard that it was Mamie Williams' son and a grandson of Georgia Haley and a nephew of Henry Cokley and his wife, Susie Cokely.

We were living at Chattanooga, Tennessee just across the State line from Rossville, Georgia, when Mamie Williams was married and were living with her at the time Eugene Williams was born, and we are positive about his age and the date of his birth, as set out in the foregoing affidavit.

(Signed) Henry Cokely. (Signed) Susie Cokely.
(Signed) Georgie (her X mark) Haley.

Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk Superior, Haralson County, Georgia. (Seal.)

[File endorsement omitted.]

Chambers of Judge Superior Courts, Tallapoosa Circuit, J. R. Hutchenson, Judge, Douglasville, Georgia

At Chambers,
Douglasville, Ga., May 6th, 1931.

I do hereby certify that the signature of S. O. Smith, Clerk of the Superior Court of Haralson County, Georgia, is his genuine signature to the attached four pages of typewritten pages.

(Signed) J. R. Hutcheson, Judge S. C., Haralson Co. Ga.

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402, 2404, and 2406

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OZIE POWELL, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

AFFIDAVIT OF PERCY RICKS

Percy Ricks, makes oath that he was on the train that the above defendants were riding from Chattanooga to Paint Rock, Alabama, on the day that defendants were arrested at Paint Rock, Ala.

[fol. 95] That, when the train got to Stevenson, that he saw the two girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Ala., going towards Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the other one had on a dress, and that he saw them get on the train and they went into a freight box car. Later he saw them get out of this box car when the train pulled over on the Southern track at Stevenson he saw them get back into the box car, and they were in it when he last saw them until they got to Paint Rock, and at Paint Rock and they were on the ground running along the train and the second girl was following the first one and looked like they were trying to get away from the train and the officers stopped them.

There was a number of officers there armed and that affiant saw them getting some of the boys out of box cars and some on top of the train, and scattered all along the length of the train.

He saw the car called the gondola in which the girls claimed to be riding and it was nearly full of crushed rock called "Chatt" and load- within about two feet of the top of the car.

He saw one of these girls a week before this trouble and she was hoboing from Stevenson to Huntsville on a freight train.

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour. Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Ricks.

Subscribed and sworn to before me on this the 16th day of May, 1931. Geo. W. Chamlee, Notary Public, Hamilton County, Tennessee. (Seal.)

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

On the 5th day of June, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said Court a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

[fol. 96] IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY and EUGENE WILLIAMS, Defendants

SECOND AMENDED MOTION FOR NEW TRIAL

Come the defendants, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, in the above styled cause of the State of Alabama vs. Ozzie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, and move the court to set aside the verdict and judgment rendered in this case No. 2402 against them on the 8th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant them a new trial and they assign the following reasons and causes separately and severally, to wit:

I

The indictment on which the defendants were tried was void and illegal; (a) In that it was vague, indefinite and uncertain; (b) in that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the defendant; (c) in that it failed properly to appraise and inform the defendants of the exact nature, basis and grounds of the charge against them and which they were called upon to meet; (d) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment the defendants could not properly and adequately prepare to meet and defend themselves at the trial: (e) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment the defendants have become and are subject for the same offense to be twice put in jeopardy of life or limb in violation of said defendants rights under the Constitution of the United States, amendment 5, which provides: — nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb'' and the rights under the constitution of the State of Alabama, Article 1, Section 6; (f) in that the said indictment by reason of its vagueness indefiniteness and uncertainty was a denial of the defendants' rights under the Constitution of the United States, amendment 14, Section 1 which provides ''—no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'', and under the constitution of the [fol. 97] State of Alabama, Article 1, Section 6 which provides; ''That in all criminal prosecutions, the accused—shall not be deprived of life, liberty, or property, except by due process of law.'' For these reasons the judgment ought to be arrested and a new trial granted.

II

The defendants on trial for their lives were entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influence and communications which might tend to disturb or distract their minds from a free, impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in advance of the trial that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which a jury was to be chosen, the jury's minds would be or become influenced against the defendants by the prevailing sentiment and feeling of hostility in the said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendants of their right under the Constitution of the United States, Amendment 14, Section 1, and the constitution of the State of Alabama, Article 1, section 6, and was an abuse of judicial discretion and constituted reversible error. A new trial should therefore be granted.

III

A new trial should be granted in that the rights of the defendants under the Constitution of the United States, Amendment 14, Section 1, and under the constitution of the State of Alabama, Article 1, Section 6, were violated for the following reasons: (a) Defendants, while under arrest were not afforded nor did they have an opportunity to employ counsel to aid and advise them: (b) they had no opportunity to employ an attorney to represent them: (c) they had no opportunity or sufficient time in the 13 day period between their arrest and trial to prepare properly for the trial on the outcome of which their lives and property depended: (d) they were in prison in a jail situated in a city far away from their homes, where their parents and kinfolks resided and they had no opportunity to communicate with such parents and kinfolks, who, when they finally learned of defendants plight, dared not visit them for fear [fol. 98] of personal violence from a hostile and excited populace; (e) due to race feeling and prejudice which prevailed in the county where the trial was held, they could not have and were denied a fair and impartial trial before an unbiased and unprejudiced jury; (f) immature in years and lacking the advantages of an education, they were too ignorant and did not know how to prepare for trial or how to obtain the attendance of their witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and they were entirely unacquainted and ignorant of the rules and principles of law; (g) repeatedly threatened, intimidated and put in fear of death, they neither knew how nor could communicate with their parents to employ an attorney in their case and to advise them about their rights until the very day when the case was called for trial: (h) continuously and throughout the trial a crowd of people dominated by prejudice and hostility towards the defendants filled up the Court room and bearing and demeanor influence the jury adversely to the defendants: (i) that while these defendants were on trial a crowd of people to the number of ten thousand gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court house and enacted demonstrations hostile to the defendants, all of which the jury could not but have known: (j) that the defendants were tried in a county where mob hostility towards them raged with such violence that the Sheriff of said county and the governor of the State of Alabama deemed it necessary to call out a military force to protect these defendants against a threatened lynching by the mob which assembled around the jail where they were held, and to guard them on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendants and to guard them after the trial back to jail; all to prevent the threats, repeatedly made, to lynch the defendants, from being carried out; (k) that the trial of the defendants, who, with four other negro boys, were charged with the crime of rape, alleged to have been committed against two white women, was conducted undre stress of great excitement, mob hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of this county and adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which [fol. 99] published in advance of and during the trial of the defendants, the supposed details of the defenants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to vicious and degraded lynch sentiment which they roused in and fed to the people of this county and the adjacent counties, thereby making it impossible for these defendants, as well as for the other defendants, to have the benefits of a fair and impartial trial, and rendering the verdict of the jury and the judgment entered thereon illegal and void; and for these reasons a new trial should be granted.

IV

The court's refusal to grant the defendants a special jury or a special venire of jurors upon the demand therefor by defendants' counsel was a denial to these defendants of their rights under the constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was in contravention and violation of the jury law of the State of Alabama as provided by the Statutes of Alabama.

V

The Court erred in not questioning and in failing to qualify the trial jurors as to race prejudice and as to whether or not they could and would, in view of the fact that the defendants were negroes, and the complainants and prosecuting witnesses a white woman, give the defendants a fair, impartial and unprejudiced trial, and the court further erred in failing to call this fact to the attention of the jurors; and if it had appeared that any juror entertained a prejudice in regard to negroes or that any juror could not or would not, in view of the fact that the defendants were negroes and the complaint and prosecuting witnesses a white woman, give the defendants a fair, impartial and unprejudiced trial, such juror should have been disqualified and discharged from jury duty. The failure of the Court in this respect was a denial of the defendants' rights under the Constitution of the United State-, Amendment 14, Section 1. For this reason a new trial should be granted.

VI

The exclusion of negroes from the list of jurors from which the defendants' jury was drawn was a denial of the defendant's rights under the Constitution of the United States, Amendment 14, Section 1, and a new trial should be granted.

[fol. 100]

VII

The court erred in that it permitted the jurors to remain in the court room during the preliminary argument and discussion of the case between the court and a group of attorneys appointed by the court to represent the defendants. This argument and discussion between the court and counsel was calculated to and did prejudice the minds of the jurors. A new trial should therefore be granted.

VIII

A new trial should be granted in that public sentiment and feeling against the defendants and the crime charged and the language of the newspapers which published the same throughout the northern part of the State of Alabama and in the State of Tennessee and Georgia were of such a character that the defendants could not get a fair, impartial and unbiased jury.

IX

The verdict of the jury and judgment entered thereon are supported by no competent or sufficient legal evidence that they are against the weight of evidence and against the law, and that all the creditable evidence adduced at the trial failed to establish the guilt of these defendants beyond a reasonable doubt; for these reasons a new trial should be granted.

X

A new trial should be granted because of evidence which has been discovered since the trial of the case tending to prove that the defendants are innocent of the charge made against them, and which said evidence the defendants did not and could not know and discover before the trial. Said newly discovered evidence will be properly presented to the court on the day of the argument of this motion for a new trial.

XI

The court erred in refusing to permit the defendants' counsel to interrogate the prosecuting witness, Victoria Price, touching her character and reputation as a common prostitute, and the court's refusal to allow such evidence and the interrogation of the prosecuting witness thereon was reversible error, for which a new trial should be granted.

XII

The court permitted error in refusing to permit defendant's counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a venereal [fol. 101] disease. A new trial should therefore be granted.

XIII

The court further erred in permitting the prosecuting attorney to put leading questions on direct examination to the State's witnesses and for this reason a new trial should be granted.

XIV

A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendants, although they knew of the severity with which the crime of rape is punished and the swiftness with which such punishment is visited in the south, remained on the train and made no effort to flee, a circumstance which, together with their conduct on the day of their arrest, supports the inference of defendant's innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XV

A new trial should be granted in that the State, although it had in its control a number of white boys who were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who, the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witness to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witness, and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the State offer any reason for not producing these witnesses. The State's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that those boys, and especially Gilley, in the control of the State, were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefited the prosecution but would have benefited the defendants, and moreover, would have exonerated the defendants.

XVI

[fol. 102] A new trial should have been granted in that proof in the record of the trial establishes the following; that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen Negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time that this train reached Paint Rock, Alabama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however conceding, that all this trouble occurred while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the Negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

XVII

A new trial should be granted to Eugene Williams because the Circuit Court of Jackson County had no jurisdiction to try and pronounce sentence upon him on account of his being under sixteen years of age (Code 1928, Sec. 3528, 22 Ala. App. 135, 113 So. 471).

XVIII

A new trial should be granted to Eugene Williams in this cause because it is shown from affidavits filed that he is under fourteen years of age and conclusively presumed, as a matter of law, incapable of committing crime and therefore is entitled to a new trial.

XIX

A new trial should be granted all the defendants in this case because the Court failed to charge that if it appeared that any of them were under fourteen years of age they were prima facie presumed incapable of committing any crime and that the burden was upon the State to establish by the evidence the contrary to the satisfaction of the jury beyond a reasonable doubt, and the Court was in error in not charging the jury as to all defendants, that if any of them were under the age of sixteen that it was not the intent of the law to incarcerate children in jail, but merely to hold them for safe keeping and dispose of them as provided by the juvenile laws of the State of Alabama, unless the cases had been heard in the juvenile court and trans- [fol. 103] ferred to the Circuit Court in the manner provided by law. For this error a new trial should be granted. Respectfully submitted.

G. W. Chamlee, Attorney.

[File endorsement omitted.]

Thereupon, on the 13th day of June, 1931, the defendants, separately and severally, filed in said cause, in support of their motion for a new trial, affidavit of Stephens R. Roddy, which said affidavit is in words and figures as follows, to-wit:

AFFIDAVIT OF STEPHEN R. RODDY

STATE OF ALABAMA,
Jackson County:

Personally appeared before me, a Notary Public, in and for the State and County, aforesaid, Stephen R. Roddy, of Chattanooga, Tennessee, who being first duly sworn, deposed as follows:

That he appeared as one of the Attorneys for nine negro boys who were tried and convicted in the Circuit Court, at Scottsboro, Alabama, on or about the sixth day of April last on the charge of rape of two white girls and during the progress of said trials, one of the defendants, Eugene Williams, told affiant he was fifteen years of age and later and before his trial, he voluntarily told affiant in the presence of witnesses, he had misstated his age to officers and affiant and that his actual age was nineteen years instead of fifteen. That he insisted on affiant or his associate Mr. Milo Moody tell the Court he was nineteen instead of fifteen years. That Messrs. Moody and Joe Hunter Attorneys were called and heard the said statement of defendant and all three attorneys closely questioned the defendant because they were apprehensive some sort of pressure had been brought to cause the said negro to change his statement as to his age. That the next day asked affiant if he had told the judge that he was nineteen years of age and upon being told that he had not as yet done so, the defendant insisted upon going before the Judge and so informing him. That he was informed that he would be given the opportunity to inform the Court at the proper time and during the day and while on the witness stand he stated he was nineteen years old.

That a few weeks after being tried and convicted and while lodged in the County Jail at Birmingham, Ala., said Williams told affiant his true age was fifteen years and he had changed his statement to nineteen years as aforesaid, [fol. 104] because he had been threatened, abused and bluffed while in the jail at Scottsboro or Gadsden into saying he was nineteen years of age.

Stephen R. Roddy.

Sworn to and subscribed before me 12th day of June, 1931. C. F. Grigg, Notary Public, ex Off. Justice of the Peace. My commission expires —— — ——.

[File endorsement omitted.]

The hearing of said motion as amended was continued by the Court from time to time until the 5th day of June, 1931, at which time the following proceedings thereon were had:

T. G. Elkins, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't know where I was, only I guess I was up at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone out on the street holler "Whoope," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that.

I heard a band some time but I don't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

I read the Scottsboro papers about the attack on these girls. I believe I read the Chattanooga papers. I think those papers said these men, or some of them had confessed their guilt.

When I was examined as a juror, I was asked questions [fol. 105] as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got there. I was put on Jury No. 3. That was the jury that tried the five defendants. I was in Davis store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house.

I couldn't say what time of the day the Norris and Weems jury reported.

I didn't pay any attention to the time of the day. It was in the latter part of the afternoon. I didn't pay any attention to the hour.

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for. However, I saw no indication of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd off the court house grounds. They also had them inside of the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

I saw several heavily armed soldiers in the court house, three or four, I couldn't say how many, as well as out in the street, during the progress of these trials.

[fol. 106] G. W. Sartin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there — several thousand people around here. I don't know how many there was. Around the Square is where I heard the hollering. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing.

I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the Court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were soldiers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be after court had adjourned and the soldiers were ready to go home; at the time I was in the court room, when it first began. I was not ap here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the square. The playing of the band or the hollering did not [fol. 107] in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began me and Mr. H. H. Hennegan were standing there talking. I don't know what the hollering was about. When I heard the band playing I didn't know what that was about.

Redirect examination:

Later I heard first one and other state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I sent on the jury and the five I knew what this demonstration was about in the other case. Somebody had already told me but I don't know everything people tell me. When I went on the jury that tried the five negroes, case No. 3 I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house I didn't measure it. It is a short ways down to the corner. I can not tell how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollowing. I do not know what that band was playing.

Recross-examination:

During the time of the trial I did not see a demonstration about a truck with a big wheel and tire. I don't know what that was for. I did not see that truck pulling a big tire around the square.

L. R. **Jones**, a witness for movant, having been duly sworn, testified as follows:

My name is L. R. Jones. I live about three miles from Bridgeport.

I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court house when the jury reported its verdict in the first case tried. I was at home, or on my way home. I had left the court room, and left Scottsboro. I didn't hear any demonstration of any sort.

[fol. 108] J. M. **Barnes**, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Bridgeport. I was on one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere betwe-n Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

Willie J. Wells, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the Negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported, in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't have any time-piece, and don't remember what time it was. I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I r-member the questions that were asked me beofore they put me on the jury.

Counsel for movants then propounded to the witness the following question:

Q. What did they ask you to qualify to as a juror?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Counsel for movants thereupon propounded to the witness the following question:

Q. Were you asked whether or not you held racial prejudice?

[fol. 109] The State objected to the question, the court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Richard Hill, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported I was in town somewhere. I was outside of the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the eveni-g sometime. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all round the court house and inside as well; I was not up here. I don't know as I later saw national guardsmen in the court house. I was not back up here that evening. Later when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass band playing after the jury reported. Nobody told me what that hollering was about. I never did learn what it was about. I have heard them talking since what it was about. I heard that sometime the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

Roy Kilbourne, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I had gone home that evening when the jury reported in this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported. I don't know as I heard about the demonstration the next morning. I heard about the verdict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then [fol. 110] all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel for movants thereupon propounded to the witness the following question:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you held racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

W. C. Scoggin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the one that tried five of them. When the jury reported in the first one of those cases I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't think there was a brass band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets and playing. I could have been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house. When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in [fol. 111] the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

Counsel for movants thereupon propounded to the witness the following questions:

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Counsel for movants then propounded to the witness the following question:

Q. When you were qualified as a joror, where you asked as to whether or not you held racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

B. M. HOLLOWAY, a witness for movants, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of those negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for this demonstration. I just heard them yelling. It was generally understood by [fol. 112] everbody that was the reason for it. I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

Counsel for movants thereupon propounded to the witness the following question:

Q. When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial I heard the organ and learned the fact that it was the Ford agency playing the organ. I heard they had different kinds of Ford cars going around.

Re-direct examination:

I didn't see that. I was in the court room.

Counsel for movants thereupon propounded to the witness the following question:

Q. Before you went on the jury did anybody tell you what those negroes were going to be tried for?

The State objected to the question, the court sustained the objection, and to this ruling of the Court movants separately and severally reserved an exception.

C. C. **Allen**, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here when the jury reported the *the* first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later [fol. 113] on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was out of town. I heard a little about the demonstration, but not much said about it. I did not hear any one of the other trials. When they tried the first case I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles as*a*way. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

Counsel for movants thereupon propounded to the witness the following question:

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I am not a minister of the Gospel.

Lee Hicks, a witness for movants, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

Counsel for movants thereupon propounded to the witness the following question:

Q. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

[fol. 114] The State objected to the question, the Court sustained the objection, and to this ruling of the Court movants separately and severally reserved an exception.

Outher Ballard, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the third jury, the one that tried five of them, I believe. When the jury in the first one of those reported, I was between here and Stevenson, or at Stevenson.

I was outside of the city of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear abybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

John Venson, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. I live in Scottsboro. I am a Ford dealer here. While the trial of these negroes was in progress here the Ford pdople made a demonstration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a par-de here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at sic o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That wss about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. [fol. 115] They broke up our demonstration, and I went over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I remember while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't — there were ten thousand. I woul*nd*'t think there were five thousand. I woul*nd*'t gu-ss there was five thousand people at any one time on the street; I don't think so, but I don't know. The court house never was full. There was a crowd around the court house. There were National Guard officers around. I just remember while we were down there *a*that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them be*o*fore. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citize*sn* from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them co*n*e in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

[fol. 116] Redirect examination:

Guard mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollards, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2042 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superintendent, Secretary and Treasurer, and paymaster, respectively, and in the order in which our names are signed of The Margaret Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mill during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year. We have this day examined the pay roll records in our office and find that Victoria Price was in our constant employ during the months of October, November, December, 1929 and January, February, March and April 1930. The records show that she worked each week during the above months. We further certify that she was — good worker and her character around and in the Mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. B. Reynolds, (Signed) W. M. Wellman, (Signed) J. V. Pollards, Affiants.

[fol. 117] State of Alabama,
Jackson County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public.

[File endorsement omitted.]

On June 6, 1931, the State filed in said cause, a rebuttal of the foregoing affidavits filed by defendant, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to-wit:

Affidavit of L. L. Maynor

In Cicuit Court of Jackson County

State of Alabama

vs.

Haywood Patterson et als.

Affidavit

The State of Alabama,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts I have lived in Madison County, Alabama, and for about the last 8 years I have lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Ala., to board and have been boarding in her home since that time. She is the mother of Ruby Bates who together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago. During all this time that I was at Mr. Bates I was either hauling logs off the mountain or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee any time during 1929 or 1930. Ruby Bates was a quiet, modest girl and much of the time while I was there she would go to church and Sunday School and I never heard any question of her character up until just a little while before this trouble, and that was after she had begun to associate with Victoria Price. There are dozens if not hundreds of people in Huntsville who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

[fol. 118] Sworn and subxcribed to before me this the 6 day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendant, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et als.

AFFIDAVIT OF P. W. CAMPBELL

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizen of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County

Sentinel, a newspaper published at Scottsboro. Some four weeks ago I went to Chattanooga, Tennessee in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chattanooga, concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hacket and he placed at our disposal two of his men who went with us to the part of Chattanooga where these negroes lived. After considerable effort we located some of them with the following results: We found Asberry Clay and his wife Savannah Clay and Solicitor Thompson read to them the affidavits which they were said to have made. They both said that there was certain statements in the affidavits which they did not make and which they did not know where in there. Especially with reference to these women living with Negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which [fol. 119] he made. We then found Tom Landers whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the Attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping. We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters where we talked with Mrs. Croft, Police Matron, who said that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with any offense and that if they had she would have had some recollection of it. On the other hand the Police Records in Chattanooga do show that two of the Chattanooga negroes, to-wit, Haywood Patterson and Roy and Andy Wright have had police records and the police authorities stated that they were very bad negroes and had given them quite a great deal of trouble. Dated this the 15th day of June, 1931.

(Signed) W. P. Campbell, Affiant.

Sworn and subscribed to before me this 13th day of June, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendants separately and severally offered in evidence, in addition to the foregoing oral evidence, in support of their said motion, the following separate and several affidavits:

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fern, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, affidavit of Percy Ricks, affidavit of Stephen R. Roddy. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

[fol. 120] The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollarde; affidavit of L. L. Maynor and affidavit of P. W. Campbell. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of said motion to set aside the verdict and judgment founded thereon and to grand defendants a new trial.

ORDER OVERRULING MOTION FOR NEW TRIAL

On June 22nd, after hearing and considering said motion, the Court overruled the same and refused to set aside the verdict of the jury and the judgment founded thereon and to grant the defendants a new trial, and to this action of the court defendants then and there separately and severally reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, and Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendants in said cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions of the trial and proceedings in said cause, the same is accordingly signed and allowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of Nov. 1931.

A. E. Hawkins, Judge.

[File endorsement omitted.]

[fol. 121] IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 121 inclusive contain a full, true, correct and complete transcript of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein the State of Alabama was plaintiff and Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams were defendants.

I further certify that the said defendants did obtain an appeal to the Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and Seal of Office this the 24th day of December, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[fol. 122] IN SUPREME COURT OF ALABAMA

EUGENE WILLIAMS, OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY

vs.

STATE OF ALABAMA

ORDER GRANTING WRIT OF CERTIORARI—Jan. 14, 1932

It is ordered that a Writ of Certiorari issue to the Clerk of the Circuit Court of Jackson County, Alabama, commanding him to make and certify to this Court by Thursday of the next call of the 8th Division, January 21st, 1932, a true and correct copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants in the case of Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery vs. The State of Alabama, pending in said Court.

[fol. 123] IN SUPREME COURT OF ALABAMA

WRIT OF CERTIORARI—Filed Jan. 16, 1932

THE STATE OF ALABAMA,
Judicial Department:

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-1932

To the Clerk of the Circuit Court of Jackson County, Greeting:

Whereas, In a case now pending in our Supreme Court, by appeal from a judgment of said Circuit Court between

Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, Appellants, and State of Alabama, Appellee, the said appellee has to the Supreme Court suggested, that the transcript of the record of said Circuit Court, filed in same Supreme Court on December 28th, 1931, is incomplete in this: the same fails to set forth a full and complete copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants.

We therefore command you to make diligent search of the records and proceedings in your office in the above cause, and certify together with this writ, a full and complete transcript of said above named records and proceedings to our said Supreme Court, by Thursday, January 21, 1932, at Montgomery.

Witness Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 14th day of January, 1932.

Robert F. Ligon, Clerk of the Supreme Court of Alabama.

[File endorsement omitted.]

[fol. 124] IN SUPREME COURT OF ALABAMA

RETURN TO WRIT OF CERTIORARI

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the court house in Scottsboro on Monday the 30th day of

March, 1931, to consider such matters as may be submitted to it by the Court, or that deserve their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greeting:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to recall and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Court House at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call:

Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton, [fol. 125] Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summonin*h* all the within named Grand Jurymen this March 30th, 1931.

M. L. Wann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

STATE OF ALABAMA,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County, is hereby order- to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

[fol. 126] SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consists of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regular-drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of said jurors so drawn, both regular and special, the said list showing which are regular and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 127] Certificate to Certiorari and Appeal of Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright, and Olen Montgomery

The State of Alabama,
Jackson County:

I, C. A. Wann, Clerk Circuit Court in and for said County and State hereby certify that the foregoing pages from 1 to 5 inclusive, contain a full, true and correct record and proceedings in the case of the State vs. Eugene Williams, Ozie

Powell, Willie Roberson, Andy Wright and Olen Montgomery demanded by Certiorari by the Clerk of the Supreme Court on January 14th, 1932, and the same belongs to the transcript in the above cause filed with the Clerk of the Supreme Court on December — 1931; to all of which I hereby certify to the said Court of Appeals as being inadvertently left out of said transcript in the case wherein the State of Alabama was plaintiff and Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery were defendants and the same being appealed to the Supreme Court of Alabama.

Witness my hand and seal of office this the 18th day of January, 1932, at the Courthouse in Scottsboro, Alabama.

C. A. Wann, Clerk Circuit Court.

[fol. 128] IN SUPREME COURT OF ALABAMA

The Court met pursuant to adjournment.
Present: All the Justices.

8th Div., 322

EUGENE WILLIAMS, OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT and OLEN MONTGOMERY

vs.

STATE OF ALABAMA

Jackson Circuit Court

ARGUMENT AND SUBMISSION—Jan. 21, 1932

Come the parties by attorneys and argue and submit this cause for decision.

[fol. 129] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, and EUGENE WILLIAMS

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

JUDGMENT

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, in so far as Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery are concerned, there is no error. It is therefore considered that the judgment of the Circuit Court as to Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery be in all things affirmed. The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoners, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the defendants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, to the Warden of Kilby prison at Montgomery, Alabama, and that said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, the 13th day of May, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the bodies of Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the Appellants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, pay [fol. 130] the costs of appeal of this Court and of the Circuit Court.

It is also considered that in the record and proceedings of the Circuit Court as to Eugene Williams, there is manifest error. It is therefore considered that the judgment of the Circuit Court as to Eugene Williams be reversed and annulled, and the cause remanded to said Court for further proceedings therein, with directions to the Circuit Court to ascertain, by proper evidence, the age of the defendant Eugene Williams, before again putting this defendant on trial, and if it be ascertained that he is under sixteen years of age, that he be transferred to the Juvenile Court of Jackson County, to be there dealt with as a Juvenile delinquent, pursuant to the statute in such cases made and provided.

It is further ordered that the prisoner, Eugene Williams, be detained in custody until discharged by due course of law.

[fol. 131] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 322

OZIE POWELL et al.

v.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

OPINION—March 24, 1932

KNIGHT, J.:

Ozie Powell, William Roberson, Andy Wright, Olen Montgomery and Eugene Williams were jointly indicted, along with three others, by a grand jury of Jackson County, charging them, and each of them, with the offense of rape. The victim of their alleged offense was Victoria Price, a young white woman who lived at or near the city of Huntsville, in this State, and who, at the time of the commission of the alleged offense, was riding upon a freight train between Stevenson and Paint Rock, in Jackson County.

[fol. 132] The trial of the appellants was had in the Circuit Court of Jackson County, on April 8, 1931, resulting in the conviction of the defendants of the offense of rape, as charged in the indictment, and the imposition of the death penalty upon each. And on April 9, 1931, each of the defendants was sentenced to death in accordance with the verdict of the jury. These sentences were, upon motion of the defendants, suspended pending this appeal.

With respect to the appellant Eugene Williams, in addition to the matters presented for review and which are brought forward by each of the defendants, a further question is raised by this appellant growing out of, and based upon, the contention made by him that he was, at the time of his trial, under sixteen years of age, and that the Circuit Court of Jackson County therefore had no jurisdiction over him, or over his case. We will first consider the record with reference to any errors that may there appear, and which affect all the defendants, leaving the question, that is presented upon age of appellant Williams, to be later discussed and considered in this opinion.

The State's theory of the case is, that the woman Victoria Price, and her companion Ruby Bates, had been on a trip to Chattanooga for the purpose of seeking employment; that on March 25, 1931, while these two women were returning to Huntsville, riding in a gondola car, attached to a freight train, and between Stevenson and Paint Rock, the defendants and other associates, all negroes, climbed over and into this gondola car, engaged in a fight with seven white boys, who were riding in this gondola car with the [fol. 133] two white women, and finally, after beating up and overpowering these white boys, either threw them bodily out of the car, or forced them to leave it; that the defendants then proceeded to rape both Victoria Price and Ruby Bates. Some five or six of the negroes, by force and threats had intercourse with the said Victoria Price, while others, at the same time, ravished Ruby Bates. The testimony introduced by the State tended to support, and if believed by the jury, did support the above facts, and the State's testimony further tended to show, and if believed by the jury did show, that after the defendants had gotten into the gondola car, and after they had expelled the white boys therefrom, one of the defendants seized the said Victoria Price, and proceeded to rape her, and while he was doing this, one of the defendants with knife open in hand and drawn, stood over the prostrate form of Victoria Price threatening to kill her if she did not submit to the outrage then being perpetrated upon her, while some one of them held her by the legs. That six of the assailants on that occasion, by force, had intercourse with Victoria Price, and a number of them with Ruby Bates; and that all of the defendants took part in the raping of the two girls. The testimony for the State further tended to show that while the girls were being ravished, the others of the defendants kept the white boys out of the car, and, to quote the language of Victoria Price, while on the stand, "telling them (the white boys) that they would kill them, that it was their car and we were their women from then on." The evidence for the State tended to show, and if believed by the jury did show, that each of the defendants, either himself ravished the girl Victoria Price, or that each was present aiding and abeting those who did actually, and forcibly, have inter- [fol. 134] course with her. If the two girls, Victoria Price and Ruby Bates, are to be believed, the defendants were guilty of a most foul and revolting crime, the atrocity of which was only equaled by the boldness with which it was perpetrated.

The defendants each denied on the stand that they, in any way molested the girls, each in most positive terms denied that they had ravished her. One or more of them admitted that there was a fight between the white boys and the defendants, and that one of them had a pistol, and at least one of them had a knife.

We have deemed it best not to rehearse the testimony in detail in this case, as in many respects it is too revolting, shocking, to admit of being here repeated.

In this connection, however, we think it proper, now and here, to call attention to the fact that many of the utterances in the printed brief, and oral arguments addressed to this Court of counsel for appellants, are not supported by the record submitted on this appeal in this case.

The indictment in this case is in the following language, omitting the caption:

"The grand jury of said county charge that before the finding of this indictment Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the grand jury are otherwise unknown than as stated forcibly ravished Victoria Price a woman, against the peace and dignity of the state of Alabama."

The sufficiency of this indictment was not tested by demurrer or otherwise, at any time before or during the trial. On motion for new trial, after conviction and sentence, the appellants for the first time question the sufficiency of the indictment. It will be noted that the indictment pursues the form prescribed in the Code, and this Court has uniformly [fol. 135] held that indictments following the Code forms are sufficient. In the case of Jinright v. State, 220 Ala. 268, 125 So. 606, this Court was again called upon to consider, and to pass upon the sufficiency of an indictment prescribed by the Code, and it was there said:

"The power of the legislature to prescribe the form of indictment is part of its general legislative power. Broadly speaking, it is curtailed only by constitutional limitations, such as the right of the accused to be informed of the nature and cause of the accusation, and to have a copy of same.—Bill of Rights, section 6.

"The indictment must reasonably disclose an offense known to the law in force during the period covered thereby, and reasonably inform the accused of the accusation he is called upon to answer. Subject to these qualifications, statutory forms have from our early jurisprudence been held sufficient, although facts essential to a conviction may be omitted.—Noles v. State, 24 Ala. 672, 692; Schwartz v. State, 37 Ala. 460, 466; Doss v. State, 220 Ala. 30, 123 So. 231."

The indictment in the present case is not subject to the criticism that it is vague, indefinite and uncertain. The nature and cause of the accusation are definitely stated, and the name of the woman, the subject of the crime, is set forth in the indictment. The form here used was approved by this Court in the case of Leoni v. State, 44 Ala. 110. This decision was rendered by this Court in 1870, and its correctness has not since been questioned, nor its soundness doubted. There is no merit in this contention of the appellants.—Schwartz v. State, supra; Smith v. State, 63 Ala. 55; Whitehead v. State, 16 Ala. App. 427, 78 So. 467; Leonard v. State, 96 Ala. 108, 11 So. 307; Walker v. State, 96 Ala. 53, 11 So. 401; Long v. State, 97 Ala. 41, 12 So. 183;

Reeves v. State, 95 Ala. 31, 11 So. 158; Huffman v. State, 89 Ala. 38, 8 So. 28; Bailey v. State, 99 Ala. 145, 13 So. 566; Coleman v. State, 150 Ala. 64, 43 So. 715; Jinright v. State, 220 Ala. 268, 125 So. 606; Doss v. State, supra; Malloy v. State, 209 Ala. 219, 96 So. 57.

[fol. 136] It therefore follows that no rights of the appellants under the State or Federal Constitutions were ignored or invaded by reason of any supposed vagueness, indefiniteness or uncertainty of the indictment. The terms of the indictment fully and sufficiently informed the defendants of the nature and cause of the accusation against them, and, in this regard, it fully complied with all requirements of the Federal and State Constitutions.

The indictment was returned into open court on March 31, 1931, duly authenticated by the signature of the foreman of the grand jury. This return is in all respects regular, and in accordance with law.

On March 31, 1931, after the return and filing of the indictment, the defendants, Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, and Clarence Norris, alias Clarence Morris, whose names are otherwise unknown than stated, attended by their counsel, came personally into open court, and were duly and legally arraigned, and pleaded "not guilty," and which plea was duly entered of record, and thereupon in open court, in the presence of the defendants, and their attorneys, the court set the trial of the cause for Monday, the 6th day of April, 1931, and by due and proper order, ordered and directed that one hundred jurors be allowed as the venire from which to select the jurors for the trial of the cause, the said venire to consist of the seventy-five regular jurors drawn to serve as jurors for the week during which the cause was set for trial, and twenty-five jurors to be drawn from the jury box of Jackson County, and thereupon the said jury box was brought into court, and after being well shaken, the court in the presence of the defendants and their counsel, and according to law publicly drew therefrom the names of twenty-five special jurors, in compliance with the [fol. 137] order of said court to complete the venire for the trial of said cause. It also appears that the Court, by proper order, directed that the sheriff summons all of said jurors, regular and special, to appear in court on the day the case was set for trial, and also to serve forthwith on defendants a list of all jurors so drawn, regular and special, together with a copy of the indictment in the case.

Thereafter, on April 4, 1931, the sheriff of Jackson County made his return to the court showing that he had fully and completely complied with said above order of the court. It thus appears that every step in the proceedings in said cause was regular, and according to law, as respects the indictment, the return thereof into court, the arraignment of the defendants thereon, the setting of a day by the court for the trial of the cause, the order for a special venire, the drawing of the same, and the service of a list of the jurors upon the defendants, together with a copy of the indictment.

Section 5570 of the Code provides "When two or more defendants are jointly indicted, they may be tried, either jointly or separately, as either may elect."

At common law, it was within the sound discretion of the court, whether the trial would be joint or several. Section 5570 of the Code confers on the defendants the unqualified right to elect and demand separate trials. In the case of Whitehead v. State, 206 Ala. 288, 90 So. 351, it is held that where two or more defendants are jointly indicted, and they do not demand a separate trial, then whether the trial shall be separate or joint rests in the sound discretion of the court. This has been the uniform holding of this Court through the years, and in ordering a severance in the case, the court but exercised a discretion confided to it by the common law, and not abrogated by statute.

[fol. 138] The complaint of appellants at this action of the court can avail them nothing. And besides, no objection was made thereto and no exception was reserved. Jackson v. State, 104 Ala. 1; Wright v. State, 108 Ala. 60; Wilkins v. State, 112 Ala. 55, 21 So. 56; Charley v. State, 204 Ala. 687, 87 So. 177.

This brings us down to a consideration of appellants' motion for a change of venue in the cause, which was made by the appellants, and overruled by the court upon consideration of the motion, and the evidence offered in support thereof, and counter-proof offered by the State.

In their petition or motion, the appellants represented to the Court "that they nor either of them can have a fair and impartial trial in this county; that the newspapers published in this county have so persistently tried the cause asserting the guilt of defendants in such terms, as to influence the public mind to the extent that the sheriff of said county had the Governor of this State to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflammatory statements contained in said newspapers, which are circulated all over this county, the mind of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publications are hereto attached marked Exhibit 'A' and 'B' and made a part of this petition. Wherefore, petitioners pray your honor to make an order removing this trial to some other county and defendants make oath that all the foregoing statements are true." This motion is sworn to by each of the nine defendants.

[fol. 139] It will readily appear from the motion or petition that the main or chief ground of apprehension that defendants could not secure a fair and impartial trial was due to newspaper accounts of the affair, published in the Jackson County Sentinel, a newspaper published at Scottsboro, the county site of Jackson County. That the publications of the accounts of the affair inflamed the public mind to the extent that the sheriff had the Governor of Alabama to call out the National Guard to protect the defendants, and that upon the arrival of the troops "hundreds of people gathered about the jail, where they were confined, apparently in a threatening manner." It will be observed, however, that the petition does not charge that any actual violence, or threatened violence was offered the prisoners, or any one of them. Nor does it any where appear that the "hundreds of people who gathered about the jail" were armed, or disorderly in any wise, or to any extent. That the crime of which the defendants were charged was one calculated to arouse the people of any community, county, or state, cannot be denied; that it was news that newspapers, the world over, would print and convey to their readers must also be borne in mind. Newspapers, observing due proprieties, have the right to keep the public informed of the happenings throughout the country. Such is the sphere and scope of their enterprise. They exist for the purpose, and sole purpose of conveying to the public the happenings of the day, whether it be of crime committed, or of events in the social world, or of matters of commerce or business. So long as they exist, we may expect them to carry accounts of crime committed, not only within the radius of their circulation, but elsewhere. Accounts of crime committed on the other side of the Atlantic often appear in the press on this side within a few hours after it has happened,—the extent of the accounts varying with the atrocity of the crime.

[fol. 140] In the case of Godau v. State, 179 Ala. 27, 60 So. 908, this Court had occasion, on consideration of the application made by the defendant in the lower court for change of venue, based in part on newspaper publications, to give expression to some principles of law here applicable, and it was there said: "So long as we have newspapers we may expect to have through them the report of crimes, and it is not to be unexpected that, when a homicide is committed and discovered under circumstances like the present—even if the defendant's account of the entire matter is the truth—newspapers of the community, answering the public interest, will furnish the defendant some material upon which to base an application similar to the one under discussion." But newspaper accounts, of themselves, cannot be made the sole basis for a change of venue. It must be made to reasonably appear to the judicial mind that these accounts have, by their circulation, so moulded and fixed the public opinion as to make it appear that the cause should be removed to some other locality not so affected for trial.

In the case of McClain v. State, 182 Ala. 67, 62 So. 241, it appears from the original record that Jacob Lutes and his wife, Marcella, were murdered in their home on the 6th or 7th of November, 1911. The murder was committed with a hatchet, and was most brutal and bloody in the manner and circumstances of its execution, and was followed by robbery of the murdered couple of a considerable sum of money. This murder was followed by great public excitement and indignation, and extraordinary activity by officers and citizens looking to the prompt discovery and punishment of the perpetrators of the crime. Hundreds of people from St. Clair and Etowah counties hurried to the scene. [fol. 141] The discussion of the crime was constant and general throughout both counties both among the people and in the newspapers. About two thousand people were in Ashville during the preliminary trial, and heard or were informed of the testimony, and of the alleged confession of one of the defendants; and a full report of the evidence, on the preliminary trial, was published in the local and in the Gadsden daily papers, with sensational headlines and comments, and with repeated statements that defendants were undoubtedly guilty, with one statement that the defendant was regarded as the ringleader. Numerous exhibits of the newspaper reports were attached to, and made a part of, the motion for a change of venue from St. Clair county, the county in which the crime was committed. These newspaper reports were equally as sensational and damaging as are the reports attached to the petition in the instant case, but like the present case they disclosed no actual violence offered defendants, and no disposition was exhibited to take the law into their own hands by the citizens. Commenting upon these newspaper reports, Mr. Justice Somerville remarks:

> "It may be fairly asserted that these conditions accompany or follow the commission of all very brutal crimes, also, that newspaper reports of such crimes, accompanied by sensational comments and denunciations of the accused, are likely to inflame the sentiments of certain classes of the people and to engender in their minds a passive conviction, more or less permanent, of the guilt of the accused.
>
> "We are not prepared to concede, however, that the sensational language of a newspaper reporter or special correspondent used in 'writing up' such cases as this may be safely taken as a reflection of general public sentiment; nor that it may be lightly assumed that such statements as those here shown are capable of permanently molding and fixing the opinions of the more intelligent classes of the people to the extinction of their sense of fair play, and the suppression of their sober second thought."

[fol. 142] Most people, of fair judgment, are honest in their convictions, and do not arrive at convictions, where life and death are at stake, until after due consideration of the facts of the case. And we may also add, that under the laws of Alabama, only such classes are permitted in the jury boxes of the State.

In the McClain case, supra, the court following the directions of the Act of August 26, 1909, now section 5579, Code, after full consideration of the petition for change of venue, and the proof submitted in support of it, upheld the ruling of the Circuit Court of St. Clair County, overruling the petition and denying to the defendant a change of venue. In that case, this Court, in affirming the case, used this presently pertinent language:

"Upon the principles and reasoning stated in the recent case of Godau v. State, 179 Ala. 27, 60 So. 908, not unlike this in its material aspects, we are constrained to hold that the trial court did not err in overruling the application. We have considered its merits de novo, as required by the amendatory Act of August 26, 1909 (Acts, Sp. Sess. 909, p. 212), and we are not reasonably satisfied that it should have been granted."

It is insisted that the publications made exhibits to the application inflamed the public mind to the extent that the sheriff of said county had the Governor to call out the National Guard to protect the lives of the petitioners. The testimony offered upon the hearing of the petition does not support the statement as to the inflamed condition of the public mind, or that it was necessary to assemble the National Guard to protect the prisoners from threatened violence. In this connection, it should be stated that the judge of the court, did not direct the sheriff to call for the militia, nor did the judge of the court make any request upon the Governor for the militia. The sheriff re-[fol. 143] quested the presence of the guard, on his own initiative, out of abundance of precaution, and we may assume, realizing the gravity of the charges against the prisoners. Up to the time the call was made, no violence had been offered any of the prisoners, and, so far as the testimony discloses, no violence was threatened them. There was, as the testimony shows, quite a large crowd in Scottsboro during the trial, made up not wholly of Jackson County citizens, but of citizens of other counties. We can well understand that such a happening, made the basis of the charge against the defendants, was calculated to draw to Scottsboro, on the occasion of the trial, large crowds. It would be surprising if it did not. But that does not mean that the gathering was for the purpose of reaking summary vengeance upon the defendants. It will be noted that in the application for change of venue, it is stated "that after the arrival of said troops, hundreds of people gathered about the jail, where they (defendants) were confined, apparently in a threatening manner." There is absent from this record a single statement of fact, which tends to show in the remotest degree any offer of violence to the defendants, and, as for that, any threatened violence.

In support of the application for change of venue, the defendants called as witnesses and examined, ore tenus, the sheriff and Major Starnes, the commanding officer of the unit of National Guard ordered to Scottsboro by the Governor. The sheriff's testimony throws much light upon the situation prevailing at Scottsboro during the period of this trial, and the cause or causes leading up to, and culminating in his calling upon the Governor for the dispatch of a unit of the National Guard to that place.

[fol. 144] The sheriff, while testifying that he had asked for the National Guard to protect the defendants, also testified, "It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment I heard on the outside. I have not heard anything as intimated from the newspapers in question that has aroused any feeling of any kind among a posse. It is my idea, as sheriff of this county, that the sentiment is not any higher here than in any adjoining counties. I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial."

The defendants in support of their application for change of venue also called, had sworn, and examined Major Starnes, who was in charge of the units of the National Guard on duty at Scottsboro during, and before, the trial of the defendants. Major Starnes testified that he was the commanding officer of the National Guard at Scottsboro, and that he had made three trips to that place. With reference to the feeling prevailing at Scottsboro at the time these defendants were brought up for trial, we quote, in part, the testimony given by Major Starnes to the court, on the hearing of the defendants' application for a change of venue:

[fol. 145] "I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have made here from Gadsden. In my trips over to Scottsboro in Jackson County and my association with the citizens in this county and other counties, *I have not heard any threats made against any of these defendants.* From my knowledge of the situation gained from these trips over here, I think these defendants *can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants.* I have seen a good deal of curiosity but *no hostile demonstration.* In my judgment the crowd here was here out of curiosity, and not as a hostile demonstration toward these defendants. (Italics supplied.)

The accounts published in newspapers, and which were introduced in evidence, while condemning in strong terms the crime, alleged to have been committed against two defenseless white girls, did not advocate violence against the defendants, but rather appealed to the citizenship of Jackson County for a fair trial for the defendants, and for an opportunity for the facts of the case to be tried by a jury. The character of the crime was such as to arouse the indignation of the people, not only in Jackson and the adjoining counties, but every where, where womanhood is revered, and the sanctity of their persons is respected. That many should have been attracted to Scottsboro during the days covered by the trial, and the preliminaries incident thereto is no small wonder, considering the character of the crime charged against the defendants. The alleged victims were not citizens of Jackson County, and it is more than possible that they were not known to a citizen of that county, but they were, if the testimony is to be believed, two young white women, unknown, and entirely defenseless. No matter whether their sins were as scarlet, it neither gave justification nor excuse to any man to lay a violent hand upon [fol. 146] them, or to force them to submit, against their will, to the violation of their persons. The record of facts in this case, notwithstanding the atrocity of the crime charged, does not disclose a single act done by the populace to show a disposition to take the law into its own hands. If the record truly gives the facts in the case, and we have no right to doubt it—the defendants at no time were in danger of mob violence, and it wholly fails to show that the court, jurors or officers were inflamed against the defendants. To the contrary, considering the nature of the crime and its revolting features, the people seem to have conducted themselves with a commendable spirit and a desire to let the law take its due course.

The burden of proof was upon the defendants to show that they could not get a fair and impartial trial in Jackson County, before the court would have been justified in granting the change of venue moved for. In the case of Malloy v. State, 209 Ala. 219, 96 So. 57, this Court, in an opinion written by Justice Miller, said:

> "When the defendant makes application for a change of venue, the burden rests upon him to show 'to the reasonable satisfaction of the court that an impartial trial and an unbiased verdict cannot be reasonably expected' in the county where the defendant was found.—Seams v. State, 84 Ala. 410, 4 So. 521."

The defendants have vigorously pressed upon our attention the case of Thompson v. State, 117 Ala. 67, as an authority not only justifying, but requiring, that this Court should reverse the lower court in refusing the defendants' application for a new trial. A careful reading of the facts in the Thompson case, supra, will disclose that this insistence is not well taken.

[fol. 147] In the Thompson case, supra—which was a case in which the offense charged was rape—it was made to appear to the court by "affidavits and other evidence" that the public were so greatly aroused against the defendant that "it required the promptest and most vigorous action of the executive officers of the State, from the governor down, and including the military, to protect the defendant from mob violence and summary execution," and that the feeling continued down to and through the trial. No such state of facts are shown in this case, and no such disposition on the part of the public was exhibited against these defendants at Scottsboro.

Much has been said in brief and oral argument by counsel for appellants about the case of Moore, et al. vs. Dempsey, Keeper of the Ark. State Penitentiary, 261 U. S. 86, in which the opinion was written by Justice Holmes, and in which Justices McReynolds and Sutherland dissented.

It requires no close scrutiny to see, and no argument to demonstrate, and there is no parallel between the facts of that case and the case now under consideration. By no stretch of the imagination can it be said that the case under consideration resembles, in the remotest degree, in any of its salient facts, the facts made the basis for habeas corpus, in the Moore case, supra.

The case of Downer v. Dunaway, (No. 6286) 53 Fed. Rep. (2d) p. 586, is cited in support of appellants' contention that they should have been granted a change of venue. We have carefully read the report of this case. The facts superinducing the majority opinion written by Judge Bryan in that case are so unlike the facts in the instant case, and the circumstances attending that trial so different [fol. 148] in all essential features, that it is not an authority in point. Anyone reading the facts in the two cases would see, and comprehend, that the cases are wholly dissimilar, and in no true sense can the decision in the Downer case, supra, be said to support the contention of appellants in this case.

Observing the plain mandate of section 5571 of the Code, but without conceding that the legislature had the right to so legislate, we have carefully considered the application, and the evidence submitted in support thereof, of appellants from a change of venue, without indulging any presumption in favor of the judgment and ruling of the lower court on said application. The burden of proof was on the defendants to show the reasonable satisfaction of the court that a fair and impartial trial could not be had in Jackson County. This burden of proof appellants did not, in our opinion, meet and discharge. The evidence fails to show that their trial was dominated by a mob or mob spirit, or that there was at any time any mob present at, or during, the trial, or that the jury was inflamed against the defendants to the point where they could not, or did not, give the defendants a fair and impartial trial; nor does the evidence show there was any violence, actual or threatened against the defendants, from the time of their arrest to the conclusion of their trial.

We are at the conclusion that the lower court committed no error in overruling appellants' motion for a change of venue. Baker v. State, 209 Ala. 142, 95 So. 467; Malloy v. State, 209 Ala. 219, 96 So. 57; Godau v. State, 179 Ala. 27, 60 So. 908; Adams v. State, 181 Ala. 58, 61 So. 352; McClain v. State, 182 Ala. 67, 62 So. 241; Hawes v. State, 88 Ala. 37, 7 So. 302; Byers v. State, 105 Ala. 31; Gilmore v. State, 126 Ala. 20; Riley v. State, 209 Ala. 505, 96 So. 599; Hendry v. State, 215 Ala. 635, 112 So. 212.

[fol. 149] There is no merit in the exception reserved by the defendants to the action of the court with reference to a special venire for the trial of the defendant. The record proper shows, as heretofore pointed out, that these defendants, along with their co-defendants, and before any severance was granted, appeared in open court, attended by counsel, and were each, along with their co-defendants—nine in number—in open court duly and legally arraigned upon the indictment, pleaded not guilty; and the court, then and there pursuant to the statute, set a day for the trial, and ordered that the venire for their trial should consist of one hundred jurors, to be composed of the seventy-five regular jurors drawn for the week of the trial, and twenty-five special jurors to be drawn, as the law directs, in open court, by the presiding judge from the jury box of Jackson County. This was done in all respects according to the statute, in such cases made and provided, and a list of these one hundred jurors, by order of the court, together with a copy of the indictment was served upon each of the defendants. This was a strict compliance with the law of the case.—Code, § 8644. And, besides, section 8649 provides:

> "Whenever the judge of any court trying capital felonies shall deem it proper to set two or more capital cases for trial *on the same day,* said judge may draw and have summoned one jury or one venire *facias* of petit jurors for the trial of all such cases so set for trial on the same day." (Italics supplied.)

This section, as was the manifest purpose of the legislature, removed the necessity of drawing a special venire for each capital case set for trial on the same day. But, be [fol. 150] this as it may, when the court ordered and allowed, a special venire of one hundred jurors to try this case, it stood upon the docket as one case, and against these defendants, as well as against their co-defendants. It results that appellants can take nothing by this exception, as the record affirmatively shows that the court had given them a special venire consisting of one hundred jurors, the maximum allowed by law.—Code, section 8644.

During the progress of the trial only two exceptions were reserved by the defendants to the ruling of the court on admission of evidence. While Sim Gilley was on the stand, testifying on behalf of the State, and after he had testified that he was "one of the boys on the train that day"—referring to the day on which the alleged rape occurred—and that he saw all the negroes in that gondola, he was asked by counsel for the State, "How many in that row there, look at that row of five sitting on the front—get up and walk over there if you cannot see them?" The defendants separately objected to the question, upon the grounds "it was immaterial, irrelevant, illegal and incompetent, and because it was reopening of the case." The court overruled this objection and defendants duly excepted. The evidence was clearly admissible. Whether it was in rebuttal, strictly speaking, we cannot affirm, but if not, the propriety of admitting it was addressed to the sound discretion of the court. There was no error in this ruling of the court.

After the witness had testified that he saw "every one of those five in the gondola," counsel for the State thereupon propounded this question to the witness Gilley: "Were the girls in there?" The defendants separately objected to that question, the court overruled it, and defendants duly [fol. 151] excepted. The objection was without merit. The question called for relevant, material and competent testimony.

It was clearly within the discretion of the court to allow counsel for the State to have a second argument, although defendants' attorneys had declined to make argument. Southern Bell Tel. & Tel. Co. v. Miller, 192 Ala. 346, 68 So. 184; Mobile & M. Rwy. Co. v. Yeates, 67 Ala. 164; Hall v. State, 216 Ala. 336, 339, 113 So. 64; Sheppard v. State, 172 Ala. 363, 55 So. 514.

After the verdict was rendered against the defendants they filed motion for new trial on the 9th day of April, 1931, and thereafter amendments to the motion were made, and filed in the cause.

It is not necessary to a proper understanding that the motion be set out at length. The principal argument in support of the motion relates to motion for a change of venue which in the main has been heretofore treated in this opinion.

It is insisted, among other things, that the demonstration made when the other verdict or verdicts were brought in greatly prejudiced their case. There was considerable testimony offered on this phase of the case, and it does not support appellants' contention. A number of the jurors testified on the hearing of the motion, and it does not appear that the appellants' cause was prejudiced by any alleged demonstrations. Certain it is also that defendants never, at any time, made any objection or reserved any exceptions to anything that occurred with reference to demonstrations or applause. Nor does it appear that the court failed promptly to suppress any misconduct that came to its notice. We hold that no error is made to appear from the ruling of the court on defendants' motion for a new trial based on the above ground—Hendry v. State, 215 [fol. 152] Ala. 635, 112 So. 212.

It is also insisted by defendants that a new trial should have been granted them, because, inter alia, they were not given time to prepare their cases for trial. No motion for a continuance appears in the record. Therefore, this contention cannot avail defendants, made for the first time after verdict. Application, based upon proper grounds, should have been made to the court before the trial was entered upon.

It is also urged that the defendants are entitled to a new trial because the court erred in not interrogating, and in failing to qualify, the trial jurors as to race prejudice, and as to whether or not they could and would, in view of the fact that the defendants were negroes, and the complainant and prosecuting witness a white woman, give the defendants a fair, impartial and unprejudiced trial, etc. It should suffice to say that the court will not be put in error for not assuming that there exists here in Alabama, and particularly in Jackson County, racial prejudices. No doubt had counsel for the defendants assumed such to exist, and had, acting upon such assumption, requested the court to interrogate the jurors on that subject, the court would have complied with their request.

It is also insisted, however for the first time on motion for new trial, that "exclusion of negroes from the list of jurors," from which defendants' jury was drawn, was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, section 1. It should suffice to say that the defendants made no objection whatever to the venire upon any such ground, nor does the record, in point of fact, sustain any such contention. Having made no objection to the personnel of the jury on account of race or color, the defendants are in no position to put the court in error, in the contention made for the first time on motion for new trial. By failing to object [fol. 153] to the personnel of the jury, the defendant must be held to have waived all objections thereto.—Batson v. State, 216 Ala. 275, 113 So. 300; Herndon v. State, 2 Ala. App. 118, 56 So. 85; Carson v. Pointer, 11 Ala. App. 462, 66 So. 910; 20 R. C. L. 241; 18 L. R. A. 475; 68 L. R. A. 885; 16 Corpus Juris 1158; Eastman v. Wright, 4 Ohio St. 156; State v. Jones, 89 S. C. 41, 71 S. E. 291; Ryan v. Riverside, 15 R. I. 436; 8 Atl. 246; Stewart v. Eubanks, 3 Iowa 191; State v. Whiteside, 49 La. Ann. 352, 21 So. 540; Ferrell v. State, 45 Fla. 26, 34 So. 220; Whitehead, 206 Ala. 288, 90 So. 351.

Without regard, however, to the foregoing, there is no merit in the appellants' above stated contention. The State of Alabama has the right, within constitutional limitations, to fix qualification for jurors.—Thomas v. Texas, 212 U. S. 278. The jury laws of Alabama do not exclude any man from jury service by reason of race or color. The qualifications of jurors are fixed and defined by section 14, Acts of Legislature of Alabama 1931, pages 55 et seq., and by this Act the jury board is required to place on the jury roll and in the jury box the names of "all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment." The jury boards of the State are required to observe these positive requirements of the statute, and there is nothing in the record to show that the jury board of Jackson County failed of their duty in any respect with reference to the jury roll or jury box in that county. The contention of the appellants in the respect here pointed out is without merit.—Ragland v. State, 197 Ala. 5, 65 So. 776.

[fol. 154] It is also urged upon our attention that the trial court committed reversible error in not granting defendants a new trial because of newly discovered evidence. It is insisted earnestly that they should have had an opportunity to prove that the said Victoria Price had the reputation of being a common prostitute. There was no evidence offered to show that she had ever had intercourse with negroes. This evidence could only be admissible as tending to show consent. The entire theory of defendants' case was that they had not touched the woman, and had no intercourse with her. The question of consent, vel non, was not therefore an issue in the case. The evidence was wholly irrelevant to any issue in the case as presented and tried.—Rice v. State, 35 Fla. 236, 17 So. 286.

It is insisted that the defendants were put to trial so soon after the alleged commission of the offense that they were unable to prepare their defense, and at a time when the public mind was so inflamed that they could not secure a fair and impartial trial.

Article VI, Constitution of the United States, provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense."

And Section 6 of the Constitution of Alabama secures to all persons, within her territorial limits the same fundamental and constitutional rights.

[fol. 155] The record before us fails to show that any right guaranteed to the defendants under the Constitution of the United States or of the State of Alabama was denied to the defendants in this case: on the contrary, the record shows that every such right of the defendants was duly observed, and accorded them.

The appellants complain of the speed of the trial. There is no merit in the complaint. If there was more speed, and less of delay in the administration of the criminal laws of the land, life and property would be infinitely safer, and greater respect would the criminally inclined have for the law.

On the 6th day of September, 1901, at 4:07 P. M. in the city of Buffalo, in the State of New York Czolgosz, an assassin fired two bullets into the body of the then most illustrious and beloved man in the United States—President William McKinley. This foul crime was committed in the presence of thousands of the citizens of Buffalo. The crime shocked, and aroused the indignation of people everywhere. Within less than ten days after the burial of Mr. McKinley, the murderer was placed on trial for his life, in the city of Buffalo, where the crime was committed. It is recorded that the trial was presided over by Judge Truman C. White, "one of the oldest and most experienced of the Supreme Court justices." It required "exactly eight hours and twenty-six minutes" to conclude the trial, and it is further recorded that "in less than one hour after Justice White began his charge to the jury, the verdict of 'guilty' was brought into court." On October 29, 1901, less than two months after the crime was committed Czolgosz, the murderer, was executed for his crime. This verdict, sentence and execution were approved by good citizens, North, South, East and West, in fact on both sides of the Atlantic.

[fol. 156] True this Czolgosz verdict was rendered in a case where a human life had been taken in a most dastardly manner. But we are of the opinion that some things may happen to one worse than death, at the hands of an assassin, and, if the evidence is to be believed, one of those things happened to this defenseless woman, Victoria Price, on that ill-fated journey from Stevenson to Paint Rock, on March 25, 1931.

As to the defendants Ozie Powell, William Roberson, Andy Wright and Olen Montgomery, we find no error in the record, and none as to defendant Eugene Williams, unless it be on account of the asserted fact that he was, at the time of his trial, under sixteen years of age. This we will now proceed to consider. The question presented is not without its difficulties, due to the fact that our statutes on the subject of juvenile delinquents do not furnish rules of procedure by which such delinquents, when indicted for crime, and brought before a court of competent jurisdiction for trial, on such indictments, shall present to the court the fact that they are under the age of sixteen years, and, therefore, not subject to trial upon such indictment. Courts must follow the plain, positive and unambiguous provisions of the statutes, whether rules for their guidance in such cases are given along with such statutes or not, and they may prescribe, for their procedure such reasonable rules and regulations not inconsistent with the statute, as may be deemed reasonable and proper.

The presently pertinent sections of the Code dealing with juvenile delinquents, and the disposition of cases in which such delinquents are brought before the courts are found in sections 3528, 3529 and 3539. Section 3528 defines juvenile delinquents. Section 3529 confides to the courts of [fol. 157] probate, except in the several counties of the State in which special courts have been given exclusive jurisdiction over children under sixteen years of age, original and exclusive jurisdiction of all proceedings coming within the provisions and terms of Chapter 100, dealing with juvenile delinquents; and it confers upon such probate courts original and exclusive jurisdiction to hear, determine and adjudicate all questions and cases falling or coming within the provisions of said statutes. To this extent jurisdiction in the circuit court is denied, or excluded. Section 3539 provides:

> "Nothing in this chapter shall be construed as forbidding the arrest, with or without warrant, of any child as is now or may hereafter be provided by law, or as forbidding the issuance of warrants by magistrates as provided by law. Whenever a child under sixteen years of age is brought before a magistrate of any court in the county other than the juvenile court, charged with any offense, such magistrate or court shall forthwith, by proper order, transfer the case to the juvenile court of the county. Any criminal court or any court exercising criminal jurisdiction in any county coming under the provisions of this chapter before which any child between the ages of sixteen and eighteen years is brought, charged with the commission of a crime,

shall have authority, if such court shall deem it to be in the interest of justice and of the public welfare, to in like manner transfer such child by proper order to the jurisdiction of the juvenile court of said county to be dealt with as a delinquent child under the terms of this chapter and when so transferred such child shall come under all terms and conditions of this chapter and be so dealt with as other children are dealt with under this chapter. All information, depositions, warrants, and other processes in the hands of such magistrate or court shall be by him or by the judge of said court forthwith transmitted to the juvenile court and shall become a part of the records of the juvenile court. The juvenile court shall thereupon have jurisdiction of the cause and shall proceed to hear and determine the case so transferred to it, in the same manner as if the proceedings had been instituted in the juvenile court by petition as hereinbefore provided.''

[fol. 158] Our statute upon the subject of juvenile delinquents are not unlike the laws on the same subject in a number of other states. The general provisions of our statutes are very similar to the statutes, on the same subject, in Kentucky and Tennessee.

In the case of Sams v. State, 180 S. W. 173, 133 Tenn. 188, 193, the question now before this Court received the attention of the Supreme Court of Tennessee. In that case (Sams) the plaintiff in error, was indicted for a criminal offense. To the indictment he filed a plea raising the question that the circuit court was without jurisdiction to try him upon the charge, in as much as he was under sixteen years of age. This plea on motion of the state was stricken. There was a jury and verdict of guilty, and sentence of the court thereon. It then appears in the minute entry that defendant filed motion in arrest of judgment. This motion was overruled by the court, defendant excepting. On appeal to the Supreme Court, the court observed:

''But the most difficult question in the present case is how plaintiff in error shall be dealt with in the circuit court upon remandment of the cause; in other words, what is the jurisdiction of that court in respect of the charge in the indictment set out against this particular plaintiff in error under the facts of this case and our existing statutes.''

Continuing, this court further observed:

"The question of the jurisdiction of the circuit court is directly presented in the cause, when we come to consider the assignment of error based on the action of the court in overruling the motion in arrest of judgment. That motion was based on the lack of jurisdiction in the circuit court. The court could then see from the proof in the cause that the plaintiff in error was under the age of sixteen years at the time of his arrest, and indeed under such age at the time of the court's action on the motion in arrest of judgment, and of course under such age at the time the indictment charged the offense to have been committed. These facts clearly appeared without dispute in the evidence which had been introduced before the jury."

[fol. 159] Continuing, the court said:

"When these facts appeared to the trial court, it should have sustained the motion in arrest of judgment, for the reason that, under chapter 58, Acts 1911, plaintiff in error was a 'delinquent' child within the meaning of section 1 of that act. That section defines a delinquent child under the age of sixteen years who violates any law of the state."

The court in the Sams case, supra, held that the motion in arrest of judgment should have been sustained, and the trial court should have transferred the case to the juvenile court.

In the case of Talbott v. Commonwealth, 166 Ky. 659, 179 S. W. 621, under statutes almost identical with our own, the Supreme Court of Kentucky held:

"That, as the circuit court was without jurisdiction of the person of the defendant (he being under sixteen years of age) the question could be made at any time, and was available for reversal, even though the question was raised for the first time in this court on appeal. It therefore results that this defendant did not lose the right to raise the question because of his failure to do so during the progress of the trial."

This question again came before the Supreme Court of Kentucky, in the case of Mattingly v. Commonwealth, 188 S. W. 370, 171 Ky. 222, and the court again re-affirmed the conclusion and holding in the Talbott case, supra.

The Court of Appeals of Alabama, in the case of Hart v. State, 22 Ala. App. 135, 113 So. 471, held, that where the defendant was under sixteen years of age, the trial court, under existing statutes, was without authority to pronounce judgment of conviction against him, being without jurisdiction of the person of the defendant, other than to forthwith, by due and proper order to transfer the case to the juvenile court of the county.

[fol. 160] In support of the motion of appellant, Eugene Williams, for a new trial, based on the ground that he was under sixteen years old, when brought before the court for trial, are the affidavits of three persons who claimed to have known him from his birth. They swear that he was born on December 6, 1916, and that affiants were living with this defendant's mother when he was born. In opposition to this evidence, no proof was offered by the State, so far as the record shows. While these affidavits may be false, yet there is nothing in this case to show their falsity. It also appears that the age of this defendant was brought to the attention of the court before the trial was entered upon.

Since the statute declares a juvenile delinquent the ward of the State, it became the duty of the trial court upon suggestion that the defendant, Eugene Williams was under sixteen years of age, or if his personal appearance suggested a doubt as to his age, to ascertain his age, and if found to be under sixteen years of age, to transfer the cause as to said defendant, Eugene Williams, to the Probate Court, as the Juvenile Court of Jackson County.—Code, Sections 3529, 3539.

If the Probate Court, as the Juvenile Court of Jackson County, upon due investigation or trial of disciplinary measures in the institution provided for the purpose, becomes convinced such delinquent cannot be made to lead a correct life and cannot be properly disciplined, he has authority to retransfer the cause to the circuit court to be tried as other cases.—Code, section 3540; Berry v. State, 209 Ala. 120, 95 So. 453.

[fol. 161] Under the plain mandatory terms of the statute, the State offering no testimony to show that the defendant was sixteen years of age, or over, it became and was the duty of the court to grant this defendant a new trial on this ground of his motion, and none other. In failing to do so, the court committed error, as to the appellant Eugene Williams, necessitating a reversal of this cause as to said appellant Eugene Williams.

There are no errors in the record as to the other appellants, viz., Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, and the cause as to them will be here affirmed.—Agee, et al. v. State, 190 Ala. 19, 67 So. 411. As to the appellant Eugene Williams the cause is reversed, with directions to the court below to ascertain, by proper evidence the age of defendant Eugene Williams before again putting this defendant on trial, and, if it be ascertained that he is under sixteen years of age, that he be transferred to the juvenile court of Jackson County, to be there dealt with as a juvenile delinquent, pursuant to the statute, in such cases made and provided.

The several matters which impel Chief Justice Anderson to dissent as shown by his dissenting opinion have received the careful consideration of the court in conference.

The speedy trial and presence of the military seems to be regarded as enough to have a coercive influence on the jury. We cannot approve the idea that speedy trials should not be had because the gravity of the charge is such as to arouse public interest and indignation. The presence of the militia, instead of having a coercive influence on the jury, was notice to everybody that the strong arm of the State was there to assure the accused a lawful trial. Any [fol. 162] good citizen would interpret this to mean a fair trial in which the guilt or innocence of defendants should be determined on the evidence and punishment meted out accordingly.

We would consider it a dangerous precedent to declare that, because, out of abundance of caution in cases of this character, it was deemed best to have militia present, safeguarding the prisoners, this should furnish a ground for setting aside the verdicts of juries and granting a new trial. As stated in the opinion, not only is there a lack of evidence that the citizenship of Jackson County intended other than a legal and fair trial of these cases, but direct evidence that such was the general expression.

Touching alleged applause upon a return of the verdict in one of the cases, we have noted evidence negativing any prejudicial effect; but would not make it plain that affidavits prepared and submitted on this line on the motion for a new trial, related to matters occurring on the main trial and in the presence of the court hearing the motion. The bill of exceptions, prepared by experienced counsel now appearing, is entirely silent as to what did occur. The bill of exceptions made up under the safeguards of law is the method of presenting such matters.

The trial judge was under the duty to consider affidavits, if at all, in the light of his own knowledge of such incidents. If these affidavits did not accord with his own knowledge, it was his duty to disregard them.

Under all the rules sustaining the trial Judge unless error affirmatively appear, his ruling on this question is not presented for review.

[fol. 163] We think it a bit inaccurate to say Mr. Roddy appeared only as amicus curiae. He expressly announced he was there from the beginning at the instance of friends of the accused; but not being paid counsel asked to appear not as employed counsel, but to aid local counsel appointed by the court, and was permitted so to appear. The defendants were represented as shown by the record and pursuant to appointment of the court by Hon. Milo Moody, an able member of the local bar of long and successful experience in the trial of criminal as well as civil cases.

We do not regard the representation of the accused by counsel as pro forma.

A very vigorous and rigid cross-examination was made of the State's witnesses, the alleged victims of rape, especially in the cases first tried. A reading of the records discloses why experienced counsel would not travel over all the same ground in each case.

Whether benefit or hurt would have attended an effort to present an argument for the accused is purely conjectural.

It is a recognized rule that if manifest error appear an appellate court is not primarily concerned with the guilt of the accused, but merely the question of a fair trial under the rules of law. But when we come to consider the granting of a new trial on account of atmosphere as affecting the verdict, we think the manifest and obvious guilt of [fol. 164] the accused is to be regarded.

We think in such case the finding of the jury and the action of the trial court should be credited to a conviction of duty under the evidence; while in a very doubtful case the question of coercive influence should be carefully scrutinized.

We cannot, therefore, agree with the Chief Justice that these cases should be reversed on the grounds set out in his opinion.

And it appearing to the Court that the day fixed by the Circuit Court of Jackson county for execution of the death sentence imposed by that court upon the said defendants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, has passed, it is ordered by this Court the 13th day of May, 1932, be and the same is hereby set and fixed for the execution of the sentence of death heretofore passed upon them by the Circuit Court of Jackson County, Alabama.

Affirmed as to appellants Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, and reversed and remanded as to the appellant Eugene Williams.

Gardner, Thomas, Bouldin, Brown and Foster, JJ., concur.

Anderson, C. J., dissenting as indicated, holding that a new trial should have been granted.

[fol. 165]

DISSENTING OPINION

ANDERSON, C. J. (dissenting):

While the Constitution guarantees to the accused a speedy trial, it is of greater importance that it should be by a fair and impartial jury, ex vi termini, a jury free from bias or prejudice, and, above all, from coercion and intimidation.

Whether or not these defendants should have been granted a change of venue may be questionable for, as was stated by the sheriff, when a witness, they could probably get as fair a trial in Jackson as any nearby county and there is no reason why this was not true. None of the defendants or the injured girls resided in Jackson County and the prejudice aroused, if any existed, was due largely to the nature of the crime and which was of such a revolting character as to arouse any Caucasian county or community, but the indictment was found and the trial had within a few days after the alleged commission of the offense and when the entire atmosphere was at fever heat.

Every step that was taken from the arrest and arraignment to the sentence was accompanied by the military. Soldiers removed the defendants to Gadsden for safe-keeping, soldiers escorted them back to Scottsboro for arraignment, soldiers escorted them back to Gadsden for safe-keeping while awaiting trial, soldiers returned them to Scottsboro for trial a few days thereafter, and soldiers guarded the court house and grounds during every step in the trial and, after trial and sentence, again removed them to Gadsden. Whether this was essential to protect the prisoners from violence, or because the officials were over apprehensive as to the condition of the public mind, matters little as this fact alone was enough to have a coercive influence on the jury.

[fol. 166] Under the statute, the defendants being unable to employ counsel, it was the duty of the trial judge to appoint counsel, not exceeding two—Section 5667 of the Code of 1923. The court did not name or designate particular counsel, but appointed the entire Scottsboro Bar thus extending and enlarging the responsibility and, in a sense, enabling each one to rely upon others. Not only this, and notwithstanding the appointment of the entire bar, we find one of the leading, if not the leading, firm subsequently appearing throughout for the State and actively participating in the trial of the cases. This is not intended as a criticism of said firm as the senior member stated to the trial court that when the Chattanooga lawyer, Roddy, appeared upon the scene in behalf of the defendants, he then accepted employment to prosecute and the trial court accepted the explanation. This Chattanooga lawyer, however, declined to appear as employed counsel and only did so as an amicus curiæ. Again, these defendants were confined in jail in another county during most of the time from the arrest to the trial and local counsel had little opportunity to confer with them and prepare their defense. They were non residents and had little time or opportunity to get in touch with their families and friends who were scattered throughout two other states, and time had demonstrated that they could or would have been represented by able counsel had a better opportunity been given by a reasonable delay in the trial of the cases judging from the number and activity of counsel that appeared immediately or shortly after their conviction.

Another pertinent suggestion, and which is not intended as a harsh criticism of the local counsel that did attempt to represent the defendants throughout the trial, as we can appreciate the position of a lawyer appointed to defend an indigent defendant whom he may feel is guilty and as against whom public sentiment is at fever heat, the record indicates that the appearance was rather pro forma than [fol. 167] zealous and active and which is indicated by a declination on the part of counsel to argue the case notwithstanding the solicitor insisted upon the right to open and close and the State did, in fact, have the benefit of two arguments and the defendants none. We, of course, realize that a defendant can sometimes gain an advantage by agreeing to submit a case without argument as the State has the opening and closing, but where there is no agreement and the solicitor or prosecutor makes two arguments and the counsel for the defendant makes none, it is bound to make an unfavorable impression on the jury.

It also appears that when the jury returned the verdict in the first case tried the court house was not only crowded but there was great applause and demonstration of approval and this was bound to have some influence over those to try the succeeding cases.

There is still another point that would indicate that the juries that tried these cases were coerced by public feeling or sentiment actuated through passion or prejudice. The punishment for the offense for which these defendants were tried, and which is to be fixed by the jury, runs from ten years in the penitentiary to death, and the jury, as to each of the eight defendants, went the extreme notwithstanding there may have been some facts, such as difference in age, leadership, etc., that would render the conduct of some less culpable than others, yet we find no discrimination whatsoever in the fixation of the punishment.

As to whether or not these defendants are guilty is not a question of first importance, the real one being did they get a fair and impartial trial as contemplated by the bill of rights? The accused being entitled to a trial by an impartial jury is deprived of this right when the jury is overawed or coerced by outside influence, pressure or conduct. According to the State's theory, the crime was brutal and harrowing and calculated to arouse the indignation of everyone and even stir the blood of the cooler and law [fol. 168] abiding citizen.

" 'But the law should prevail, without any reference to the magnitude or brutality of the offense charged. No matter how revolting the accusation, how clear the proof, or how degraded, or even brutal, the offender, the Constitution, the law, the very genius of Anglo-American liberty, demand a fair and impartial trial. If guilty, let him suffer such penalty as an impartial jury, unawed by outside pressure, may under the law inflict upon him. He is a human being and is entitled to this. Let not an outraged public, or one which deems itself outraged, stain its own hands—stamp on its soul the sin of a great crime—on the false plea that it is but the avenger of the innocent.' "—Seay v. State, 207 Ala. 453.

It may be that neither of the foregoing reasons, if standing alone, should reverse these cases, but when considered in connection with each other they must collectively impress the judicial mind with the conclusion that these defendants did not get that fair and impartial trial that is required and contemplated by our Constitution. Therefore, in justice to the defendants and to the fair name of the State of Alabama, as well as the County of Jackson, these cases should be retried after some months of cooling time have elapsed and by their vigilant employed counsel.

I think that the trial court erred in refusing to grant a new trial in each of these cases and therefore feel constrained to dissent from the affirmance of same.

[fol. 169] Clerk's certificate to foregoing paper omitted in printing.

[fol. 170] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY, Appellants,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING

[fol. 171] [Title omitted]

Comes the appellants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, and hereby make application for a rehearing of said cause and moves the Court to set aside the judgment of conditional affirmance rendered in said cause and to grant them a new trial, and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

Geo. W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Schrieber, Attorneys for Appellants.

[fol. 172] [Title omitted]

Now comes the appellants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, in the above cause and presents this their application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellants or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument in support thereof.

I.

The Court erred and misconstrued appellants' assignment of errors, as set out in their brief and in this cause, and that their motion and petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled them to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative of their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 173] II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges that the appellants "Before the finding of the indictment forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legislature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 174] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting witness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due *rp*ocess of law, and the judgment against them was void.

[fol. 175]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in contr*o*vention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of their legal and constitutional rights to be informed legally of the charge against them.

Geo. W. Chamlee, (Signed) J. R. Brodsky, (Signed) Irving Schwab, (Signed) G. W. Chamlee, Jr., Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 176] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAMS

VS.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER OVERRULING APPLICATION FOR REHEARING

Application for rehearing having been filed by Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, in this case, on March 25th, 1932, and each and all grounds of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and said application for rehearing be and the same is hereby overruled.

[fol. 176½] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, Appellants

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The Petitioners, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Appellants, in the above styled cause most respectfully represent that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon these petitioners and fixing May 13, 1932, as the date of their execution, and that they filed their petition for a rehearing in this Honorable Court, which was overruled and disallowed on April 9, 1932, and they desire to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon them to give them and their counsel time to comply with the legal requirements in the preparation and filing of their petition for certiorari in the Supreme Court of the United States at Washington, D. C. for the purpose of having their case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioners make this application under the provisions of Section 9(d) of the Act of Congress of February 13, 1925, (U. S. Code title 28, section 350), and in support thereof present the following:

Your petitioners feeling themselves aggrieved by the judgment of this Court and as they are advised by their attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 177] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioners of their lives and liberty without due process of law and has denied to your petitioner the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioner although duly applied for compelling your petitioner to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioners of the charge against them with the certainty required.

(c) Your petitioners were denied an opportunity to employ counsel or to be properly represented by counsel and to prepare their case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioners their right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioners are advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 subd. 1). Your petitioners are advised by their counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 178] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioners may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioners are advised by their attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioners respectfully ask this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 179] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioners, and your petitioners have been advised that it will take your petitioners and their counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioners respectfully ask this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioners respectfully submit that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Charlie Weems et al. vs. State of Alabama, and Haywood Patterson vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the wirt of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioners respectfully submit to this Honorable Court that a stay of execution is necessary in order to give your petitioners an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. They respectfully pray that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing of a petition for a writ of certiorari and pending the consideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Andy Wright, (Signed) Olen Montgomery, (Signed) Ozie Powell, (Signed) Willie Roberson, by (Signed) G. W. Chamlee, Atty.

[fol. 180] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Jr., Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, Atty. (Signed) Irving Schwob, Atty.

[fol. 181] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY

vs.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause is to made to appear to the Court by petition that defendants (appellants) desire to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendants, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoners Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932, to June 24th, 1932, it is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendants Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the bodies of said Ozie Powell, Willie Roberson, Andy Wright [fol. 182] and Olen Montgomery until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellants pay the costs of appeal of this Court and of the Circuit Court.

[fol. 183] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT,
OLEN MONTGOMERY, Appellants,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court.

You are hereby requested to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of

1. The record on appeal in said cause, a copy of which we submit herewith,
2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith,
3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.
4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.
5. The petition for a rehearing, a copy of which we submit herewith.
6. The final judgment and decision of the Supreme Court of the State of Alabama.
7. The copy of this præcipe.

8. Your certificate to the record that it is a complete record in said cause.

Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

[fol. 184] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 99

HAYWOOD PATTERSON, PETITIONER,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 23, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,796)

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No.

HAYWOOD PATTERSON, PETITIONER,

vs.

STATE OF ALABAMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX

	Original	Print
Record from circuit court of Jackson County	1	1
Caption (omitted in printing)	1	
Indictment	1	1
Writ of arrest	1	1
Judgment entry	2	2
Bill of exceptions	3	3
Caption	3	3
Petition for change of venue	3	4
Exhibit "A"—Excerpt from newspaper	4	5
Exhibit "B"—Excerpts from newspapers	8	9
Testimony of M. L. Wann	15	17
Testimony of Joe Starnes	17	19
Order denying petition for change of venue	18	20
Testimony of Victoria Price	19	21
Ruby Bates	24	27
Dr. R. R. Bridges	27	30
Thomas Rousseau	28	32
Lee Adams	29	33
Ory Robbins	30	34

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INDEX.

	Original	Print
Testimony of C. M. Latham	31	35
Haywood Patterson	31	35
Roy Wright	34	38
Andy Wright	37	42
Eugene Williams	38	43
Olen Montgomery	40	45
Haywood Patterson (recalled)	41	46
Ozie Powell	43	48
Victoria Price (recalled)	44	50
Charge to jury	45	50
Motion for new trial	47	53
Amended motion for new trial	48	54
Exhibit "A"—Affidavit of Oliver Love	56	63
"B"—Affidavit of McKinley Pitts	58	65
"C"—Affidavit of Isaac Hinch	58	66
"D"—Affidavit of J. P. Hobby	59	67
"E"—Affidavit of Annie Linson	60	68
"F"—Affidavit of Asberry Clay	62	70
"G"—Affidavit of Savannah Clay	65	73
"H"—Affidavit of Willie Douglas	65	74
"I"—Affidavit of Tom Landers	66	75
"J"—Affidavit of Silas Johnson	67	76
Exhibits—Excerpts from record in Weems and Norris case	70	78
Petition of Claude Patterson et al	87	97
Second amended motion for new trial	92	102
Affidavit of Haywood Patterson et al. in support of motion for new trial	101	111
Exhibit No. 1—Excerpts from record in Weems and Norris case	108	118
Affidavit of Roberta Fearn	122	133
Bertha Lowe	123	134
Willie Crutcher	124	135
Allen Crutcher	125	136
Henry Cokley et al	126	137
Percy Ricks	127	139
Testimony of Major Joe Starnes	129	140
Capt. Roland Fricke	129	141
T. G. Elkins	130	141
W. G. Sartin	132	143
L. R. Jones	133	145
J. M. Barnes	134	146
Willie J. Wells	134	146
Richard Hill	135	147
Roy Wilbourne	136	148
W. C. Scogin	136	149
B. M. Holloway	138	150
C. C. Allen	139	151
Lee Hicks	140	152
Luther Ballard	140	153
John Venson	141	154

	Original	Print
Affidavit of T. B. Reynolds et al....................	143	156
L. L. Maynor...........................	144	157
P. W. Campbell.......................	145	158
Order overruling motion for new trial.............	147	161
Order settling bill of exceptions......................	148	161
Certificate of appeal......................................	149	161
Proceedings in supreme court of Alabama.................	150	162
Supplemental record..	150	162
Argument and submission...............................	154	166
Judgment	155	166
Opinion, Brown, J..	156	167
Petition for rehearing.....................................	175	180
Order overruling petition for rehearing....................	185	188
Petition for stay of execution...........................	186	188
Order staying execution.................................	191	192
Præcipe for transcript of record..........................	192	193
Clerk's certificate..................(omitted in printing)..	193	

Order allowing certiorari.. 195

[fols. a-1]

[Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2404

The State of Alabama

vs.

Haywood Patterson

Indictment—Filed March 31, 1931

The State of Alabama,
Jackson County:

Circuit Court, Special Session, March, 1931

The Grand Jury of said County charge that before the finding of this indictment Haywood Patterson, whose name to the Grand Jury is otherwise unknown than as stated forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

H. G. Bailey, Solicitor for Ninth Judicial Circuit.

Circuit Court, Special Session, March, 1931. The State vs. Haywood Patterson. Indictment. Rape. No Prosecutor. Witnesses: C. F. Simmons, Dr. Lynch, Victoria Price, Ruby Bates, Orvel Gilly, Dr. R. R. Bridges, C. M. Latham, Tom Taylor Rousseau. A true bill, J. N. Ragsdale, Foreman Grand Jury.

[File endorsement omitted.]

In Circuit Court of Jackson County

Writ of Arrest

To any sheriff of the State of Alabama, Greeting:

An indictment having been found against Haywood Patterson at the Special term, 1931 of the Circuit Court of

Jackson County for the offense of Rape. You are therefore commanded forthwith to arrest the said Haywood Patterson and commit him to jail, unless he give bail to answer such indictment at the said Circuit Court of Jackson County in the sum of — Dollars.

Witness my hand this 31 day of Mar., 1931.

C. A. Wann, Clerk.

[fol. 2] Executed by arresting the within named defendant and committing him to jail, March 31, 1931.

M. L. Wann, Sheriff.

In Circuit Court of Jackson County

No. 2404

The State

vs.

Haywood Patterson

Judgment Entry

April 7, 1931 Comes H. C. Bailey Solicitor, who prosecutes for the State of Alabama in this behalf and also came the defendant in his own proper person and by his attorneys of record and the defendant having had served upon him by the Sheriff of this County a copy of the regular jury, and the Special jury, also a copy of the indictment, and the said defendant the said Haywood Patterson, being duly arraigned and having the indictment read over to him, for his plea thereto says that he is not guilty, the said defendant by his counsel did file a motion for a change in venue to which the court overruled and the defendant excepts to the Court's ruling on same.

Issues being joined, there came a jury of good and lawful men to-wit: George R. Joyner and eleven others who being empanelled and sworn, according to law, upon their oaths do say: "We the jury find the defendant guilty of rape as charged in the indictment and fix his punishment at death."

"(Signed) George R. Joyner, Foreman.

April 9, 1931, the said defendant the said Haywood Patterson being now in open court and being asked by the court if he had anything to say why the sentence of the law should not now be pronounced upon him says nothing. It is therefore considered by the court and it is the judgment of the court and the sentence of the law that the said defendant the said Haywood Patterson, in keeping with the verdict of the jury be sentenced to death by electrocution at Kilby Prison, in the City of Montgomery, Montgomery County, Alabama, on Friday the 10th day of July, 1931.

April 18, 1931, the Clerk of this Court did write death warrant for the said defendant the said Haywood Patterson and directed the same to the warden of Kilby prison commanding him to execute the said sentence and fail not in making his return as to how and when he executed the same.

The defendant appealed from the judgment and sentence of this court to the Supreme Court and sentence is suspended pending said appeal.

[fol. 3] IN CIRCUIT COURT OF JACKSON COUNTY

No. 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON

Bill of Exceptions—Filed Nov. 30, 1931

CAPTION

Be it remembered that upon the trial of the foregoing styled cause, in the Circuit Court of the Ninth Judicial Circuit of Alabama, beginning on, to-wit: the 7th day of April, 1931, present and presiding the Honorable A. E. Hawkins, Judge of said Court, the following proceedings not otherwise appearing of record, were had, to-wit:

On said 7th day of April, 1931, the defendant, Haywood Patterson, filed in said cause his petition for a change of venue, said petition being also signed by other defendants, and a severance as to the defendant in this cause, to-wit, Haywood Patterson, was granted upon motion of the State. Said petition for change of venue is in words and figures as follows, to-wit:

PETITION FOR CHANGE OF VENUE

To the Hon. A. E. Hawkins, Judge of the 9th Judicial Circuit Court:

Your petitioners, the undersigned, who are defendants in a cause now pending in said court, charged with the offense of rape, respectfully represents that they nor either of them can have a fair and impartial trial in this county; that the newspapers published in this county have so persistently tried the cause asserting the guilt of the defendants in such terms of these defendants, as to inflame the public mind to the extent that the Sheriff of said county had the Governor of this state to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflam-atory statements contained in said newspapers which are circulated all over this county, the minds of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publications are hereto attached marked [fol. 4] Exhibit "A" and "B" and made part of this petition. That the public generally have already convicted them. Wherefore, petitioners prays Your Honor to make an order removing this trial to some other county and the defendants hereby make oath that all the foregoing statements are true.

Ozie (his X mark) Powell. Haywood (his X mark) Patterson. Eugene (his X mark) Williams. Charlie (his X mark) Weems. Roy (his X mark) Wright. Willie (his X mark) Roberson. Andy (his X mark) Wright. Olen (his X mark) Montgomery. Clarence (his X mark) Norris.

Sworn to and subscribed before me this 6 day of April, 1931.

C. A. Wann, Clerk Circuit Court.

Filed April 6, 1931.

C. A. Wann, Clerk.

Said Exhibit "A", attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "A"

Jackson County Sentinel

Scottsboro, Ala., March 26, 1931.

Nine negro men rape two white girls, charge.

[fol. 5] **Threw white boys from freight train and held white girls prisoners until captured by posse.**

All negroes positively identified by girls and one white boy who was held prisoner with pistol and knives while nine black fiends committed revolting crime.

National Guard called here and escorts prisoners to Gadsden for safe keeping until Tuesday.

Two girls and seven white boys were attacked by negroes as freight train left Stevenson; girls' home Huntsville.

Case has no parallel in crime history. Assault took place in mid afternoon as freight train sped through this county.

Special term of Grand Jury and court called for next Monday and April 6th.

This afternoon (Thursday) eleven National Guard officers and seventy Guardsmen are on their way to Gadsden, Alabama, escorting nine negro men to the jail at that city for safe keeping. Every one of the nine blacks is charged with raping one or both of the two white girls they held prisoner on a fast through freight train as it was passing through Jackson County Wednesday afternoon between noon and three o'clock after they had attacked and thrown from the train six white boys and held one white boy a prisoner with pistol and knives.

The negroes have all been positively identified by the two girls and all of the white boys, all of whom are now in Scottsboro to await the convening of the Jackson County grand jury called for special term next Monday, March 30th, to investigate the case.

The girls were Victoria Price and Ruby Bates, who gave their ages as 17 and 18 years, and gave Huntsville as their home. They stated that they had been in Chattanooga looking for work and were broke and decided to hobo back home with the white boy companions. Both girls were garbed in overalls.

The names of the white boys were John Gleason, John Ferguson, Roy Thurman, Lindsay and Odell Gladwell, Lester Ceter and Orville Gilley. All of these white men gave addresses in other states except Gilley, who stated his home was at Albertsville in Marshall County. Gilley was the one held prisoner by the negroes and is an eye witness to every assault.

The negroes, as hard looking lot as ever marched into jail here, gave their names as Ozey Powell, Chas. Weems, [fol. 6] Clarence Morris of Atlanta, Olen Montgomery of Monroe, Ga., and Roy and Andy Wright, Eugene Williams, Haywood Patterson of Chattanooga, and Willie Roberson of Columbus, Ga.

These last four named negores were identified by Chattanooga police as being "the worst young negroes in Chattanooga" and all of them have bad police records in that city.

Negroes Accuse Each Other

This morning one of the younger negroes was taken out by himself and he confessed to the whole matter but said "the others did it." He was taken back to point out the guilty and the negroes immediately began accusing each other of the crime.

Surprise Attack Overpowered Whites

According to the general story told by both the girls and white boys, the two girls and seven white boys were in a gondola car (or coal car) which had about two feet of gravel in the bottom of it. They were beating their way to Huntsville from Chattanooga. When the fast freight pulled away from the coal chute west of Stevenson, the nine negroes and maybe one or two more jumped down in the car and attacked them, the negroes showing a pistol and knives. Several of the smaller white boys were bodily thrown over the gondola sides and the fight was soon left to only three or four white men and they fought until one y one of the black brutes overpowered them and threw them over the side of the car.

One white boy, Orville Gilley, was struck over the head with a pistol and left in the corner for dead, but he roused up and found a knife held at his throat by two negroes who told him they intended to kill him. While some of the negroes held the two white girls others of the fiends raped them, holding knives at their throats and beating them when they struggled.

Splendid Capture by Deputy and Posse

The first white boy thrown from the train struggled his way back to Stevenson and gave the alarm but the freight had already passed Scottsboro and word was flashed to Paint Rock, where Deputy Sheriff Latham, of Trenton, who happened to be in Paint Rock, quickly formed a big posse of heavily armed citizens and they lined up on both sides of the railroad and stopped the train and got every negro brute as he dropped from the cars.

The white girls were found in the car in a terrible condition mentally and physically after their unspeakable experience at the hands of the black brutes. They were hurried to Scottsboro and given medical attention.

[fol. 7] The negroes were lined up at Paint Rock and Sheriff Wann and the posse brought all nine of them to Scottsboro where they were identified by the two girls and all of the white boys.

A great crowd gathered at the jail and it was thought that the prisoners were being carried to Huntsville for safe keeping, but the Sheriff changed his mind. Mayor Snodgrass and other local leaders addressed the threatening crowd and pled for peace and to let the law take its course and after an hour or two the crowd dispersed and all was quiet.

As a precautionary measure Governor Miller had been asked to send troops to Scottsboro and Major Joe Starnes of Guntersville, with ten other officers, commanding Alabama National Guard Companies E, F, G, arrived here within less than three hours' notice from the time his men were called, establishing a splendid record for the Guard as to ability to "get there when called." However, all was quiet, the soldiers relieving the sheriff and many of his deputies who had been on watch throughout the night.

Today it was decided to send the negroes to Gadsden and the National Guard will escort them to that city, also escort them back to Scottsboro for arraignment and trial.

Some of the white boys thrown from the train were badly beaten up and bruised and were given attention by local doctors.

Case Without Parallel in Country

This crime, the news of which was flashed around the whole county as a "first" Associated Press story, stands without parallel in crime history. Nine Negroes charged with rape, all of them being seen by three white eye-witnesses in open daylight, and this heinous attack following an assault and attempt to murder on the seven white boys who tried to protect the girls.

Calm thinking citizens last night realized that while this was the most atrocious crime charged in this county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process. The citizens and officers are also commending the citizens of Paint Rock for their splendid and courageous stand in helping uphold the law at a most trying time.

Special Term of Court Called for April 6th

Circuit Judge Alf E. Hawkins and Solicitor Bailey [fol. 8] arrived in Scottsboro Thursday morning and immediately went into conference regarding a special term of the grand jury and circuit court.

The grand jury was summoned to reconvene next Monday, March 30th, and the Circuit Court to reconvene the Monday following, April 6th. County Court has been postponed to the first Monday in May.

All members of the present grand jury are given notice to please be at the court house next Monday morning, the convening of the jury at about 10 o'clock.

This jury consists of J. N. Ragsdale, foreman, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, Walter Berry.

According to legal procedure in a case of this grave nature it is necessary to allow certain time to elapse for legal procedure between the indictment and trial. Many citizens had hoped to get a speedier trial even than this date set, but under the law it is properly set and we feel sure that Jackson County people will accept this verdict and be a part in keeping peace in this time when it is hard to be lawabiding. Judge Hawkins and Solicitor Bailey have secured Judge Speake and Solicitor Pride of Madison County to hold their court at Guntersville week after next in order that they might give this early trial to these negroes.

Said Exhibit "B," attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "B"

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Negroes Indicted on Charges of Rape

Grand jury finds 20 indictments against blacks charged with rape of two white girls on train.

Negroes plead not guilty to most serious charges in legal history of this county.

Trial set for next Monday at Scottsboro; 100 jurors summoned to try case; troops form constant guard to alleged rapists.

[fol. 9] Surrounded by a cordon of soldiers bristling with automatic rifles, pistols and riot guns, nine negro men stood up in the Jackson County court house last Tuesday morning and were indicted on the most serious charges known on the statute books of Alabama, rape. The negroes were Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, all of whom pled not guilty to the charges of having raped Victoria Price and Ruby Bates, two white girls.

Twenty Indictments Against Negroes

The Jackson County Grand Jury went into session last Monday Morning investigating the case and Tuesday morning reported twenty indictments for rape against the nine negroes for the alleged rape of Victoria Price. There were nine individual indictments against the negroes, nine against them for the alleged rape of Ruby Bates, and two indictments against the whole nine negroes collectively for the alleged rape of both Victoria Price and Ruby Bates. This placed three indictments against each negro for the alleged crime of Wednesday of last week when it is said these negroes attacked the two white girls after overpowering or throwing from a moving freight train seven white boys who were in the same car with the two white girls.

The grand jury, under the direction of Solicitor Bailey, and County Solicitor Thompson, called before it a number of witnesses, including the two girls, Victoria Price and Ruby Bates, whose homes are in Huntsville, the boys who were with them and thrown from the train, the boy who was held prisoner and alleged to have witnessed the entire assault, the doctors, several officers and others who had information on the case.

No Disorder at Arraignment

The negroes were brought to Scottsboro from the Gadsden jail where they had been carried Thursday of last week.

They had an escort and guard to and in Scottsboro of Sheriff Wann and deputies and Major Joe Starnes of Guntersville in command of 25 picked soldiers from the Alabama National Guard. These soldiers were armed with automatic rifles, riot guns and pistols and kept order in the court room and kept "crowding" at a minimum. A great crowd of people was present or tried to get into the court room. However, the general temper of the public seems to be that the negroes will be given a fair and lawful trial in the courts and that the ends of justice can be met best in this manner, although these cases charged against the negroes appears to be the most revolting in the criminal records of our state, and certainly of our county.

[fol. 10]

Defense Lawyers Appointed

A Chattanooga lawyer, a Mr. Broddy, was at the court Tuesday he said, "to investigate the case of the negroes for interested parties in Chattanooga, but said he at that time had not been employed as counsel to defend them at the trial. Judge Hawkins appointed the entire Scottsboro bar not otherwise excluded from the case, to act as temporary attorneys for negroes or active counsel for them if it appeared they would have no other counsel. Mr. Broddy also agreed to be listed as a temporary attorney for the defense. So at this time it is not known positively just who will defend the negroes and there may be outside legal talent from several places.

It is understood that the Scottsboro law firm of Proctor and Snodgrass has been retained to assist in the prosecution of the negroes.

Trial Set for Next Monday

The trial of the negroes is set for next Monday, April 6th, in the special term of Jackson County Circuit Court. Judge Hawkins has drawn 100 regular and special jurors to appear for service. The list of jurors appears on this page of the Sentinel.

We are informed the State will make effort to try all the negroes at the same time under one indictment. If this is accomplished the matter will be made brief. If it becomes necessary to try each defendant separately it will take hundreds of jurors and many days court time.

100 Guards Here Next Monday

Major Starnes Will Command Picked Troops at Trial Next Monday.

Major Joe Starnes of the Alabama National Guard stated to the Sentinel Monday that he expected to bring at least one hundred picked men for escort and guard duty to Scottsboro on next Monday when the nine negroes charged with rape on two white girls are brought here from Gadsden to be tried in the Jackson County Circuit Court.

The units coming here will be from Guntersville, Albertville and Gadsden and will be officered by about eleven men. These troops will remain here during the duration of the trial at least.

Major Starnes and his men made a record answer to the emergency call that was sent to them last Wednesday night by the Governor of Alabama, arriving in full military equipment at the Scottsboro jail in less than three hours from the time the Major got orders to come to Scottsboro. It was [fol. 11] in the night and his men had to be notified at their homes in many parts of Marshall and Etowah counties.

Jurors Drawn for Special Term of Court

The following is a list of regular jurors drawn to appear next Monday morning for service at the special term of Jackson County Circuit Court which will try the nine negroes indicted for rape:

A. H. Hill, Bridgeport, Lem. R. Jones, Bridgeport, Geo. R. Joyner, Bridgeport, J. M. Barnes, Bridgeport, Luther Hart, Bridgeport, L. M. White, Bridgeport, W. C. Lindsay, Stevenson, Luther Ballard, Stevenson, John St. Clair, Stevenson, John N. Coffey, Stevenson, Virgil Knight, Stevenson, Horace McCrary, Stevenson, A. L. Akins, Stevenson, G. C. Reeves, Bryant, James Walker, Fackler, Clay Shrader, Fackler, Albert Rash, Rash, James D. Allen, Rash, Lee Hicks, Olalee, Ed. Matthews, Olalee, Arthur Gamble, Olalee, C. C. Allen, Olalee, A. L. Starkey, Hollywood, Wade S. Rowe, Pishgah, Will G. Sartin, Pishgah, Griff Callahan, Langston, Chas. Utter, Langston, T. Gaines Elkins, Tupelo, Steve J. Mitchell, Tupelo, Perry B. Hall, Larkinsville, J. B. Selby, Larkinsville, Pleas Kennamer, Woodville, Wm. Bishop, Woodville, P. W. Page, Woodville, Roy Wilbourn, Trenton, Richard Hill, Collins, Chas. Grady Swaim, Collins, Tom Austell, Collins, John W. Butler, Bishop, P. R. Sanders, Kyles Spring, O. C. Proctor, Scottsboro, Wm. McCutchen, Tom W. Flowers, L. D. Dean, Scottsboro, J. Exum Sumner, John L. Staples, Scottsboro, J. W. Austell, Scottsboro, J. H. Harris, Section, J. A. Galloway, Section, McKinley Gilbreath, Section, J. A. Staten, Section, Granville Carter, Section, Luther B. Whitten, Section, J. A. McFarlin, Garth, J. A. Houk, Garth, J. G. Enochs, Hollytree, W. C. Scroggins, Dutton, Fred Morris, Dutton, Robert Hope, Dutton, Tom J. Dean, Dutton, Sam Dobbs, Dutton, T. M. Holloway, Dutton, Joe M. Kennamer, Gross Spring, Albert Britt, Haigwood, R. D. Bryant, Haigwood, John D. Culpepper, Haigwood, W. G. Isbell, Lim Rock, W. B. Clark, Princeton, J. F. Wilkins, Wininger, M. P. Adams, Rosalee, Alfred James, Deans, M. H. Moore, Deans, Eli

L. Brown, Deans, J. E. Creswell, Deans, B. M. Bradley, Deans.

Special Jurors

The following is a list of 25 special jurors drawn to supplement *to* regular list above of 75. According to law only 100 jurors can be summoned at one time and if more are needed during progress of Court the judge is empowered to [fol. 12] draw them as needed. The following jurors also report next Monday morning:

Wm. E. Moore, Pisgah, Mose Dawson, Scottsboro, John Strawn, Section, Joe L. Outlaw, Section, Marion Johnson, Lim Rock, Lee Golden, Princeton, W. Gordon Harris, Hollywood, John L. Blevins, Stevenson, Wm. E. Glover, Lim Rock, Tom Shepard, Swaim, Willie J. Wells, Paint Rock, John N. Hatchett, Swaim, Geo. O. Cook, Paint Rock, Hub. F. Everett, Paint Rock, Avery Steele, Olalee, J. Walter Clunn, Princeton, John Golden, Princeton, Tom Arnold, Pisgah, John W. Sumner, Scottsboro, Albert Hoge, Tupelo, Charles S. Sewell, Flat Rock, Lee Sahby, Maxwell, Joe A. Ross, Woodville, Geo. R. Allison, Stevenson, Jesse C. Smith, Section.

Jackson County Sentinel

(Editorial)

Scottsboro, Ala., April 3, 1931.

The Case of the Negroes

The editor of the Sentinel is informed that the attorneys for the nine negroes being held for rape of two white girls on a train in Jackson County, last Thursday will petition for a "change of venue" under the claim that newspaper stories and other propaganda have made it impossible to get a fair and unprejudiced trial in Jackson County for the negroes.

This claim is without foundation at all. The citizenship of Jackson County just wants one thing—justice. They would want the same thing for white men charged with this offense just the same as they want it for the blacks. Under most trying circumstances our citizenship has acted fairly and, we believe, most wisely. If these negroes are guilty of the heinous crime of which they are charged they should get the severest penalty of the law, is our honest opinion. If they are not guilty, they are the most mistreated so far as charges are concerned, of any men ever arrested in this county. None of the parties, either negroes or white, are residents of Jackson County. Jackson County certainly gets no pleasure out of the matter.

But in justice to the Sentinel and the article it printed last week regarding the affair, we tried very hard to temper the story down to keep from inciting the people rather than to do so. There was testimony of the two girls that was entirely too revolting to go in any paper or even [fol. 13] be made public property. If these stories are true, these nine negroes are all guilty and should pay. The negroes have offered nothing to refute these charges except their mumbled "not guilty" answers in the court Tuesday. It is their privilege and the privilege of their attorneys at the trials next week to prove these charges false if they can do so. The citizenry of this county and this state wants these negroes to have every opportunity to prove their innocense before a verdict is rendered. If they cannot prove innocense the law is expected to do its full duty.

Next Monday should be orderly in Scottsboro in every way. A tremendous crowd will be here, most of them out of curiosity. The town will have a hundred or more soldiers in it too. Every body is urged to keep down any and all friction with the troops. They are nice, gentlemanly young men from our neighboring counties who will carry out their every obligation to their state and country and are not sent here as "bullies" to intimidate citizens.

The Sentinel is not prejudiced. The nine negroes face the gravest charges ever docketed at one time in Jackson County or Alabama. The evidence against them is corroborated and witnessed. It hardly seems possible that all evidence can be broken down, but these negroes will be given every right of defense of their own liberties and lives. Jackson County lives by the law; it will accept the settlement of this matter by the law. But we just want the world to know that these negroes were not scooped up on vague charges and slammed in jail on a pretense of a rape charge. The editor of this paper heard and saw the two poor white girls identify and point out the negroes and heard and saw the white boys who were thrown from the train and the one who was held prisoner and witnessed, he said, the wholesale rape of these two helpless white women, identify and point out every one of the nine blacks, as parties to the rape and assault. This white boy was bruised and scratched, he said by the negroes choking and beating him. The Sentinel is not trying to convict the negroes without a trial, it just resents the insinuations on those who accuse our citizenry of being acting on race prejudice, when evidence and not prejudice is what is holding and indicting these negroes. We fail to see where a change of venue could benefit the negroes very much, if any. The testimony would be the same, and the witnesses are as well known elsewhere as in this county and court.

[fol. 14]

A Hideous Blot

(Chattanooga News)

How far has our vaunted Southern chivalry sunk when we must contemplate two young women being forced out into the world to find work, and when we review the fact that they were then forced to return home in overalls, stealing a ride in a gravel car on a freight train.

How far has humanity sunk when we must contemplate the frightful things which occurred in that gravel car.

How much farther apart than night and day are the nine men who perpetrated those frightful deeds and a normal kind-hearted man who guards his little family and toils through the day, going home to loved ones at night with a song in his heart.

How is it possible that in the vesture of man can exist souls like those nine, while others in the vesture of man can dream such beauty as Keats dreamed, or can paint as did Raphael, or sing as Caruso, or play as Kreisler? The beasts of the fields do not differ among their own kind as do men, who are either blessed or cursed with imagination.

The terrible story of the ride on that freight train between Chattanooga at Scottsboro was strangely depressing to all the South. It lay like a weight on the heart of those who read it.

The News urges the Alabama grand jury to return speedy indictments. We still have savages abroad in the land, it seems. Let us have the solace of knowing that at least we have arisen above the justice of savages.

Mob Violence Again Averted

(Montgomery Advertiser)

Sheriff Wann, of Jackson County, is a cool, sensible and determined officer of the law, the sort of man whose neighbors must have learned to respect before they had occasion to test his mettle. Otherwise those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls. But with nine deputies and one volunteer standing by his side the sheriff sent word, to the impassioned men without, that he would fight before surrendering the prisoners. They stood around a while—300 of them, say the dispatches—when the weather turned cold unexpectedly and to be comfortable they dispersed and went to their homes.

The circumstances were peculiarly trying. Some of the negroes confessed that 12 of them attacked two white [fol. 15] girls, two of the negroes having escaped capture. Ordinarily it would be next to impossible to restrain the mob spirit in such circumstances. But two factors entered into the success of Sheriff Wann in protecting his prisoners. The first is that the angry citizens without must have known that the Sheriff was in earnest. The second is the growth of anti-lynching sentiment in Alabama. Today mobs are more reasonable and tractable than they used to be, because it has been the policy of public officials, especially Governors, and the policy of ne-spapers, for many years to condemn mob action. Alabama Governors generally hav- been vigorous in their efforts to combat the mob spirit.

Governor Miller acted promptly and in the best Alabama tradition in sending National Guardsmen to Scottsboro. This was a wise precautionary measure.

The courts are acting promptly in arranging for a grand jury investigation of the crime.

In other words, in the face of extreme provocation, Alabamians have again shown that they are willing to let the law have its way.

Defendant offered in evidence, in support of his petition for change of venue, said Exhibits "A" and "B", separately and severally, and the same were accordingly admitted in evidence, separately and severally.

In support of said petition for change of venue, defendant offered the following oral testimoney:

M. L. Wann, having been duly sworn, testified as follows:

"My name is M. L. Wann. I am Sheriff of Jackson County, Alabama. To bring these defendants to Court to trial today I did call this National Guard unit to accompany the prisoners in court, although I did have a crowd here, I did not see any guns or anything like that and I did not hear any threats. I had this National Guard unit to accompany the prisoners to court when they were brought here several days ago. As Sheriff of this county I deemed it necessary for the protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guard."

Cross-examination:

The Solicitor for the State propounded to the witness the following question:

[fol. 16] Q. Sheriff, you make up your mind from the sentiment of the people on the ground of the offense and not from any voice of feeling?

Defendants objected to the question on the ground that it is leading; on the further ground that it calls for a mental operation of the witness; on the further ground that it calls for a conclusion of the witness; on the further ground that it calls for an unauthorized conclusion of the witness; on the further ground that it calls for incompetent, irrelevant and immaterial testimony.

The court overruled the objection; and to this ruling of the Court defendant duly and legally reserved an exception.

The witness answered: A. Yes, sir.

The witness testified further: It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment that I heard on the outside. I have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county that the sentiment is not any higher here than in any adjoining counties. I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial.

Redirect examination:

I have troops here right now to keep the crowd back from the court house, and there is a great throng around this court house right now that would come in if I did not have the troops; they are from different counties here today. I know there are lots of them; there are several from Madison, Marshall and DeKalb. There are hundreds of them around the court house at the present time. They are not allowed by the guards to come to the court house. That is the rule. At the time these prisoners were arrested and brought to this jail I estimated the crowd at around two hundred. Then I took precautions to protect them. I thought that was my duty as an officer. I think there are three or five units of the National Guard here, protecting these defendants at the present trial, if I understood Major Starnes. I have five units of the State militia here now.

[fol. 17] JOE STARNES, having been duly sworn, testified as follows:

Direct examination.

I am Major Starnes, of the Alabama National Guard. I have one Hundred and seven enlisted men here protecting these defendants. There are five units of the National Guard represented. I have eleven officers. I have one hundred and seven enlisted men and some non-commissioned privates. Two companies accompanied these defendants to this court. Several days ago I had a picked group of twenty-five enlisted men and two officers from two of my companies to bring these defendants over for arraignment. I received the call from the State Adjutant General at Montgomery at nine o'clock P. M., on the evening that the attack occurred in the afternoon. On every occasion I have been in Scottsboro I have found a crowd of people gathered around, and at the present time I have issued orders to my men not to let any come in the court house or court house grounds with arms. That situation exists right now, and has existed not only today but under orders of the court on every appearance of the defendants. My units of the National Guard have protected these men and have been with them on every appearance they have made in this court house. Every time it has been necessary, and for the arraignment of the defendants, I have brought them here and have carried them away. After these men were arrested, I first brought them back on Tuesday of the past week, is my recollection, March 31st. I brought them back here for arraignment. We arrived here at 10:30 and left at 4:00 o'clock. I brought them at 10:30 in the morning and left at four in the afternoon and took them back to Gadsden, then I brought them back here and arrived at 5:15 o'clock this morning. I have had them here twice from Gadsden. I brought them here and carried them back.

Cross-examination:

I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have made here from Gadsden. In my trips over to Scottsboro in Jackson county and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants. I have seen a good deal of curiosity [fol. 18] but no hostile demonstration. In my judgment, the crowd was here out of curiosity and not as a hostile demonstration toward these defendants.

The foregoing is all the evidence offered on the hearing of said petition of defendants for a change of venue.

The court denied said petition for change of venue and dismissed the same, to which action of the court defendant reserved an exception.

The court entered the following order denying and dismissing said petition:

ORDER DENYING PETITION FOR CHANGE OF VENUE

"The petition for change of venue having been heard on this 6 day of April, 1931, before the Honorable A. E. Hawkins, Judge, presiding, on the evidence introduced in open court and the exhibits, the copy of the Jackson County Sentinel and the proof introduced for the defendants, and for the state, and the court being of opinion that said petition is not well taken, the same is overruled and dismissed. It is, therefore, ordered and is the judgment of the court that the defendant's petition for a change of venue in this cause be and the same is hereby dismissed. The defendant duly excepted to the action of the court in dismissing his petition for a change of venue."

Upon motion of the State, the court granted a severance as to the defendant in this case, to-wit, Haywood Patterson, and the case proceeded against said defendant.

Before proceeding to strike the jury in this case defendant demanded a special venire in addition to the regular venire for the trial of the case. The court declined to allow a special venire for this case and required the defendant to strike a jury from the regular venire drawn for the week and the special venire drawn in the case of the State of Alabama vs. Charley Weems and Clarence Norris, to which action of the court in not allowing them a special venire in this case, and requiring him to select a jury from the regular venire and the special venire drawn in the case of the State vs. Charley Weems and Clarence Norris, defendant duly and legally reserved an exception.

Thereupon, after the striking of the jury for the trial of this case, the following proceedings were had:

[fol. 19] Victoria Price, a witness for the State, being first duly sworn, testified:

Direct examination:

My name is Victoria Price; I live at Huntsville, Alabama. On or about the 25th of March, 1931, I was on a freight train traveling through this county from Stevenson, Alabama, to Paint Rock, Alabama. Ruby Bates, another woman, was with me. I saw this defendant, Haywood Patterson; I saw him come over the top of the train. At that time I was in a gondola car. When I first saw the defendant come over the top of it, the train had just left out of Stevenson about ten minutes; that was after it had left out of Stevenson about ten minutes. The train was traveling towards Scottsboro, in this county. There were eleven more colored men with the defendant when he came over the top of the train. I stated that I was riding in a gondola car. There were Ruby Bates and seven white boys in the car with me. When these colored men came over the top of the car, this defendant told these white boys to get down, to unload. There were twelve of these negroes, as I stated. After that time, they commenced knocking the white boys off and shot a time or two. The defendant was among them. In that fight, I saw this defendant knock a boy in the head with a gun, a 38 pistol. I saw him do something else in that fight with the white boys. He put his hands on me and had sexual intercourse with me there in that car; that occurred while the train was running this side of Stevenson, in this county. Others there had hold of me while he had intercourse with me, but

I do not know their names; that little one sitting over yonder (indicating) had hold of me while the defendant was having sexual intercourse with me, and that one over yonder (indicating); both of them held me while he ravished me. This defendant's private parts penetrated my private parts. The defendant was in that bunch there and he helped to take my clothes off. He had a knife and a gun, and I don't know what all, and he was cursing them and calling them all sorts of names and everything. I got off the train at Paint Rock, Alabama. This defendant was on the train when I got off there. Those twelve negroes were not on there at the time I got off, but nine of them were on there.

When the train stopped at Paint Rock, I crawled up by the side of the gondola and finished getting my clothes fixed up and started to get off the train and got next to the bottom step and fell of-, and when I came to myself I was sitting down at a store. I made complaint to several who were down there at the store about the way this defendant [fol. 20] had treated me. Somebody took my clothes off; this defendant had something to do with that; he sat on my overalls after they were taken off; that was after he had had intercourse with me, that he sat down on my overalls. The overalls were then off of me and were about a foot or a foot and a half from me at this time. After I had gotten off the gondola car, when I came to myself, I was sitting at a store and the Doctor was there and I left there and came to the jail. The store at which I was when I came to myself is at Paint Rock, Alabama, in this county. I came to the jail at Scottsboro;

After I came to Scottsboro, the Doctor made an examination of me while another Doctor was present, but only one made the examination. It was about an hour and a half, somewhere along there, after I got off the train at Paint Rock before this Doctor made the examination of me here in Scottsboro; it was about an hour and a half; I will not be positive of the time.

Cross-examination:

I do not know what county this is. I do not know where the county line is. I suppose that Paint Rock is in the same county as Scottsboro, I reckon it is; I don't know anything about that. I have not been living around here. I was afraid when I saw the negroes coming over the top of that car. I screamed and cried out when I saw them coming over the car. They had pistols and knives out; two of them had pistols. I counted them as they came into that car and counted two pistols and all of them had knives but two. They had their knives out and open. They came up there and shot over the gondola where we were and said, "unload." All of them did not have pistols; I said that two of them had pistols; it looked like all of them had knives; I never saw the like in my life. The knives were open. They came down there and told the boys to "unload", and Ruby Bates and I started to get off the train and they grabbed us. I was grabbed by that one over yonder (indicating), that black one, the big one. I know how they came over the top of the car; the big one came first and the others followed him, one right after the other. This defendant here was the second one to come into the car. There is the third one (indicating) to come into the car, that one over there at the left. The fourth one was that one sitting right over yonder (indicating). I know there were four of them came in there and they stood there knocking the white boys off and the rest of them just came and jumped in there. They began to jump two at a time and you couldn't tell who they were. I know four of them, because I was standing up there [fol. 21] in the corner. Ruby Bates and I were standing up there in the corner looking at them.

I did not ask the boys whether any of them were cut with the knives these negroes had. All the colored boys had knives, and those knives were opened. I did not examine the knives to see whether they were long-bladed knives or not, but I saw the knives. I did not say that everyone of the negroes had knives; I said I saw knives on them and it looked like pretty well all of them had knives. They had two pistols. Those two that had pistols also had knives, because one of them held a knive on me. He put the pistol in his pocket or did something with it after he threw me down in the car. I was very much excited at the time. Six of them had intercourse with me. I know which one had intercourse with me first; I know the second one that had intercourse with me. None of the boys had intercourse with me twice. I have made no statement to the newspapermen or to the National Guardsmen or others that some of the men had intercourse with me two or three times. I have not made such a statement. They wanted to, but I did not say that they did it; I said they wanted to and they would have if the train had not stopped, I guess. There were twelve of those boys and only six had intercourse with me. I did not have intercourse with six of them, and six with the other girl.

I can tell you that all six had intercourse with me, but as far as picking out each one that came, one at a time, that is pretty hard to do; I could not undertake to pick them out from the first to the sixth one; I had seen some of these negroes before; I had seen two of them before in Huntsville but did not know them. I do not believe that I had ever seen this defendant before, not until that day I have seen these defendants since I got off the train at Paint Rock; I have seen them once or twice over there at the jail. I have not talked to them; I had no business to talk with them. I don't associate with them. I was hurt, I was not well and was pretty sick. I was not torn. I have been married; I have been married twice. Both of my husbands are not now living; one of them is dead.

Counsel for defendant asked the question:

Q. Are you divorced?

The State objected to the question, which objection was sustained by the court, to which ruling the defendant duly and legally reserved an exception.

[fol. 22] The Witness (continuing): I left Huntsville on Tuesday, the day before I came back. The other young lady in this case with me left Huntsville with me. We left on a freight train and rode to Chattanooga. We got off of the train there when it stopped. I could not tell you the name of the place where it stopped, but it was pretty close to the water tank; it was right there in the Chattanooga yards. I was in overalls then. I was not in company with the white boys on the train coming to Chattanooga; we were by ourselves. There were no white boys in the car with us going to Chattanooga with us. I stayed all night in Chattanooga. I know where I stayed there; I stayed at Mrs. Kelly Brochie's; I do not know how you spell her name; I do not write good and I have not asked her how it was spelled. I had known her about four years. I had known her in Huntsville. She had lived in Chattanooga a pretty good while.

She lived on Seventh Street, but I dod not know the number of her house. I did not notice whether Seventh Street runs East and West or North or South. I did not pay any attention to that; it was pretty close to town, the business section; It was four or five blocks off the business streets. I walked to her home. I did not know the house when I saw it. A boy there showed us where the house was. I do not know who the boy was. We met him on the street, on the sidewalk in Chattanooga; I did not know the boy; I butted into him and asked him where she lived; and he happened to know her. He said he had lived there all his life. He did not take us to where she lived, but showed us there. He did not walk with us or accompany us any part of the way. He told me to go down that street and when I got to the fourth house to go in. All I know is that it was on Seventh Street; it was not a storehouse, but was close into the town section. The mill is not out in the country. I do not know the name of the mill there; that is a mill where I applied for work. I applied for work at two of them. They call one of them the factory mill. Seventh Street is out close to the factory mill. The factory plants are not a mile or two from the mill house, I do not reckon, I have never measured the distance. I applied for work at two places. I left Chattanooga the next morning when the freight train pulled out.

This woman with whom I stayed went to the mill with me. The white boys were on the train when I got on. I had never seen any of them before that time. I had not seen any on the train the day before when I went up there. I told you we went by ourselves. I think that I had seen two [fol. 23] of the negroes who came into the gondola before that time, but I did not know them. I did not scream or raise my voice or draw my knife when I saw these negroes coming over with open knives and pistols; I fought with them, I tussled with one of them, with the one sitting right there (indicating), and he smacked me. It took three of them to get my clothes off, and they just paired off and six of them had intercourse with me and six with the other girl. I do not know anything about this section around Paint Rock or this place through here, but the train was pretty close to Paint Rock when the last one got through having intercourse. I was going from Chattanooga to my home at Huntsville; I did not have any other place to go. I have worked in the mills at Huntsville for eleven years. I live at Huntsville; my mother lives there. I have known the other girl about two years. She has worked in the mill at little over a year.

Counsel for defendant asked the question:

Q. Did you ever practice prostitution?

The State objected to the question, which objection was sustained by the court, to which ruling the defendant duly and legally reserved an exception.

The Witness (continuing): I don't know what you are talking about. I do not know what prostitution means. I have not made it a practice to have intercourse with other men.

Counsel for defendant asked the question:

Q. Never did?

The state objected to the question, which objection was sustained by the court, to which ruling the defendant duly and legally reserved an exception.

The Witness (continuing): I have not had intercourse with any other white man but my husband; I want you to distinctly understand that.

Redirect examination:

I went to Chattanooga looking for work. One of these white boys was in that gondola car when the train got to Paint Rock. I know which one that was; it was the Gilley boy. The other six white boys that were on the train when it left Stevenson were knocked off by the negroes. They were knocked off about five or ten minutes after the train left Stevenson; I could not say the exact place it was. When the negroes had intercourse with me, there was only one white boy on the gondola with me. He saw the whole thing. The negroes got these white boys off the train. They knocked [fol. 24] two of the white boys in the head before they were put off. The white boys did not fight them. They did not have anything to fight them with. Eleven negroes had knives and guns.

Recross-examination.

I stated that this negro (defendant) had a .38 revolver. The other gun was a .45, a big, old black long-looking gun; I ought to know; he hit me up by the side of the head; I was tapped with it. I was not knocked in the head, because I am not dead.

Thereupon the following occurred:

The Court: I think the jury is ready to report. Sheriff, take this jury into the jury room while the other jury reports.

(Thereupon the jury retired to the jury room.)

Ruby Bates, a witness for the State, being first duly sworn, testified:

Cross-examination.

My name is Ruby Bates; I am seventeen years old. I was with Victoria Price on a freight train in this county running from Chattanooga to Huntsville. I was riding on that freight train between Stevenson and Paint Rock. On that train, I saw the defendant over there; I saw him there on the train. When I first saw him, the train was just this side of Stevenson, and at that time he was coming over a box car with the rest of the colored boys. I could not tell you just how many colored men I saw there; I saw more than the defendant; I saw more than one. When I first saw them, I was sitting down in the gondola. There was gravel in that car; it was not plumb full. I was in the end of the car next to where the negroes jumped into it. Mrs. Price and I were together. At the time the negroes jumped over into it, there were seven white boys in there with us. After the negroes jumped in there, they told the white boys to "unload" and hit two of them in the head with pistols, and then all of them got off but one; he stayed on there. All seven of the white boys got off but one. They had a fight with those negroes; they fought back with them. I saw two negroes with pistols; this defendant was one of them; I saw him with a pistol; he was one that had a pistol, and another one had a pistol and the rest had knives, and these knives were open.

[fol. 25] I know what happened after these white boys got off the train. They threw us down in the gondola and they all ravished me. I saw some of them ravish Victoria Price. I saw the defendant. I saw him when he was having intercourse with her. When he had his hands on her or was on her, I saw other colored men around her. One of them had a knife holding it on her throat and the other was holding her legs, and that is when I saw this defendant over there (indicating), the one sitting next to Mr. Roddy (of counsel for defendant) on Victoria Price.

I got off the train at Paint Rock. These colored men were on the train when we reached Paint Rock or stopped there. When the train stopped there, the colored men ran toward the engine and the people down there surrounded the train and got them off. I got off the gondola car without anybody helping me off. When I got off the car, Victoria Price was unconscious at that time; she got nearly off the car and fell off and I picked her up and laid her on some grass and stayed there with her about ten minutes before the people brought a chair down there and put her in it and carried her to a store. Mrs. Price and I did not go anywhere until they brought us up here. Some doctors made an examination of Mrs. Price after she got to Scottsboro.

Cross-examination:

I have never traveled with Victoria Price; I had never been with her before. I had never ridden a freight train before. I had known Victoria Price a little over a year. I worked with her in the mill. I did not live in the same house with her; I have never lived with her. We are good friends. We go with each other.

Going into Chattanooga on the day before, I saw some white boys on the train. There were white boys on the train. I did not talk with them; never said a word to them. They were in the same car with me. There were white boys in the car with us going into Chattanooga the day before. I did not count them and do not know how many there were. I spent the night in Chattanooga with Mrs. Brochie; I did not know her. Victoria Price met a boy up there and asked him where Mrs. Brochie lived. She just saw this boy and stopped him and asked him where she lived. She did not know this boy but he knew this woman. He told us she lived on Seventh Street. He did not take us to her home. I could not tell you how far from the business section her home was. I do not know how far I walked; I do not know the number of her home; I know it was on Seventh Street; that is all I know about it. I could not tell you how far from the mill it was.

[fol. 26] This woman went with Victoria Price and me the next morning to seek work at the mill; she accompanied us. We visited Thatcher's Mill; that is the only one we visited. We talked with the boss at the mill. I do not know his name.

I do not know how many boys were in the car with us when we were going into Chattanooga. There were no boys on the car with us when we got on the train to leave Chattanooga. They got on just after the train pulled out from Chattanooga. At that time the train was still in Chattanooga. Seven boys got on then. I do not know how many were on there the day before, but there were seven on there when we left Chattanooga.

I do not know how far we had gone when the negroes came over in the car, but we were just this side of Stevenson. I counted the negroes as they came in the car—I did not count them as they came into the car; I counted them after they were in the car. I counted twelve of them. They had not been in the car but a few minutes when I counted them. I do not know what prompted me to count them; I just did it, and I am sure there were twelve of them. They all come in a bunch. One of the negroes that had a gun was the first one to come into the car. I do not know what his name is, but I can point him out. The second one to come into the car was the other one that had a gun. The two that had pistols were the first ones in the car.

One of them had a .38 and the other was a .45. I saw them. I am familiar with guns and I recognized them as a .38 and a .45. That one sitting right there (indicating) had a .38, and the one that had the .45 was the one that was over there this morning. I can see the boys. I do not know exactly which one of them it was that had the .45. All except the two that had the pistols had open knives when they came over the car.

I do not know the second negro that came over into the car; I could not tell exactly which was the second one. I stated that they told the white boys to "unload". I was in a high state of excitement, and was not paying any particular attention to what was going on with anybody else. I was busy looking after myself. I do not know all of the boys that were having intercourse with Victoria Price. I could not be sure about who was the first one that had intercourse with her; that was happening to me at the same time. I would not undertake to say who was the first and the second and third and fourth and fifth and sixth of the boys that had intercourse with Victoria Price; I could not say that. My attention was fully taken up with what was happening to me. There were twelve negroes there all to- [fol. 27] gether. There are nine of them here now. The other three got off the train between Woodville and Paint Rock somewhere. I do not know how they happened to leave the train; they just got off. I did not hear them say why they left the train. I could not be sure about the boys that had intercourse with Victoria Price.

Dr. R. R. Bridges, a witness for the State, being first duly sworn, tetsified:

Direct examination:

(Qualifications of the witness were admitted in open court by counsel for defendant.)

I remember the time it is said a freight train was stopped here at Paint Rock and these negroes taken off of it. Some time after that, I made an examination of Victoria Price and Ruby Bates. It was something around four o'clock, or just after, when I made that examination; it was on the same day this train was stopped; it was four o'clock in the afternoon.

At the time of my first examination on the afternoon or evening, I found their vaginas were loaded with male semen, and the young girl was probably a little more used than the other, the other was not showing as much. On the body were bruises on the lower part of the groin on each side of Ruby Bates, that is the young one, and there was a bruised spot around the hips, or the lower part of the back, on the other girl, the Price girl, a few scratches, small scratches on the hands and arms, and a blue spot here (indicating) on the neck of one of them; I think that was Mrs. Price, I will not be sure about that. On my first examination in the afternoon, they were not nervous or hysterical over it at all, they submitted readily to the examination and answered questions readily, and on the next morning I went over their bodies again, from the waist up, hunting for other bruises, and they were both panicky and crying and nervous about it.

I obtained male semen from the vagina of each of these women. I obtained just enough to put on a slide, just a speck that will smear out on a glass, and you cover that with another glass and take a high-power miscroscope and looked under that. I found spermatazoa; that is the male germ. I know that both of these women had had sexual intercourse. I could not say whether this spermatazoa that I found was alive or dead.

[fol. 28] Cross-examination:

I remember counting in one field, which is very small, with the microscope, which you could not count with your eye at all, in one fifteen spermatozoa and in the other seventeen; you could not see that with your eye at all. I do not know how many times these girls had intercourse. I do not know how long a time had elapsed since then. I could not swear as to the color of the persons with whom they had intercourse; I could just swear as to the intercourse. I made the examination about four or a little later. They were in the office about an hour or an hour and a half.

Counsel for defendant asked the questions:

Q. Do you know whether or not these girls had a venereal disease?

The State objected to the question, which objection was sustained by the court, to which ruling the defendant duly and legally reserved an exception.

The Witness (continuing): I did not see any bleeding or tears in my examination, but saw a few minor bruises. The Bates girl had two blue places, one on each side of the vagina, low down in the groin, and her vagina was a bit red, more than normal, but no torn places on either one of them.

Redirect examination:

In my judgment as a physician, six men could have had intercourse with these women, one right after the other, without producing lacerations or tears.

Recross-examination:

These girls told me that each had received six negroes. I did not hear one of them say she had intercourse twenty times and the other thirty times. They told me how they were held, how they went through it, how it was done, while they were in the office.

Thomas Rousseau, a witness for the State, being first duly sworn, testified:

Direct examination:

I was out at Paint Rock, along about two or three o'clock, when these negroes were taken off of the train. I am familiar with this railroad through this county. The territory along the right of way of that railroad from Stevenson to [fol. 29] Paint Rock is in Jackson County, Alabama. I do not know just exactly how far it is from Stevenson to Paint Rock; I imagine, I would say it is sixty or seventy miles, somewhere along there. All of that territory between there and Stevenson is in Jackson County.

I saw these negroes on that train. I saw the defendant over there getting off the train. When I saw him getting off of it, the train was at Paint Rock. I saw these girls, Victoria Price and Ruby Bates on that train. These negroes got off of the train right up close to the tender, next to the engine and coal car and the bulk of them were two cars behind the coal car. I did not see the girls in the car where the negroes were getting off. They were not in the car at that time. I saw the negroes come out of the car where the girls were. When I saw the girls, one of them had been brought up from the train unconscious, and they had her in a chair, with her head over that way (indicating) and her eyes closed. I did not know the names of the girls, but I was told it was Victoria Price. I saw the other girl one time, but was not close to her.

Cross-examination:

I did not go down to the train because of the fact that I had information that the negroes were on there after these white girls, but did have information that the negroes had thrown some white boys off of the train. I was given that information by Will Brannon. He is a blacksmith. The message had been telephoned down to Paint Rock; that was on complaint of the boys that were thrown off. I did not read the message.

Lee Adams, a witness for the State, being first duly sworn, testified:

Direct examination:

I live at Stevenson, I recall the day it is said a freight train going toward Huntsville was stopped down at Paint Rock and some colored men taken off it. On that day, I observed a freight train pass while I was near the Southern Railroad track this side of Stevenson; I was at that time out about the coal chute, about a mile, or a mile and a half this side of Stevenson. It was twelve-thirty or one o'clock when I saw the freight train pass there; that was in the afternoon. As that train passed me, I saw them striking this way (indicating) and fighting; that was in a coal car, or a gondola car, they call it. The backs of the men who were striking were to me; I did not see but one doing that; that was over the side of the coal car. They were striking [fol. 30] over on the right-hand side of the car. I saw somebody thrown off or someone get off of that train or coal car there; I saw them throw him off on the right-hand side. I was on the left-hand side and they went off on the right-hand side. After the train passed, there were two men who came back up the track with blood running down their faces. They were white men and went in a rush up the road toward

Stevenson. They were about a mile or a mile and a half from Stevenson when I saw them.

Cross-examination:

I do not know where those men are now; I just saw them as the train came by. I do not know anything about this defendant having intercourse with one of the girls. I do not know whether he did or not; I did not hear any words spoken. All I know is that I just saw them fighting in the car, saw them go off and saw these men coming back up the road with blood running down their faces.

Ory Robbins, a witness for the State, being first duly sworn, testified:

Direct examination:

I live at Stevenson. I recall the day it is said this freight train was stopped down at Paint Rock, along about the 25th of March. On the day that is said to have happened, I saw a freight train pass my place up there. When that train passed by, I was standing at the woodpile, about a hundred yards from the track. I could see about a mile one way along the track and I could not see so far the other way, because the train passed the barn and it obstructed my view. The place where I could see a mile is going toward Stevenson. The train was traveling in the direction of Huntsville. As the train passed, I saw two girls and these colored people, and as it got by, one of the colored men grabbed a woman and threw her down, and the train then got by the barn; I saw that in a coal car of the train. I did not pay any attention to the colored men. I just saw that one grab her and throw her down. I saw one white boy on the train. I did not see any white people getting off of the train or thrown off of it. As it passed, all I saw was one colored man and one white boy on it.

Cross-examination:

I do not know anything about who they were. The train was just passing along there.

[fol. 31] C. M. **Latham**, a witness for the State, being first duly sworn, testified:

Direct examination:

Along about the 25-h of March, I was out here at Paint Rock when a freight train came along going toward Huntsville when some negroes got off of it. When I first saw the negroes, they were in a coal car. I saw the defendant over there; he is one of them. From where I was, I could not tell where he was when I first saw him; I was down the railroad a little piece, I guess a hundred yards down the road. I saw these women getting off the train. When I saw them, they were getting off the train from the side. They were getting off the same car the negroes were in; it was a coal car, loaded with gravel, I think, a gondola car. I saw the women and saw how they appeared. When I saw them they were standing there and said, "We have been mistreated" as I passed them. It looked like one of them could not walk the way she was getting along. I think she was carried to the Doctor's office. I took her to the doctor's office. They stayed in Paint Rock something about thirty minutes before they left.

Cross-examination:

I was not in there and do not know anything about this particular intercourse or about the girls. All I know is that they told us. I did not see the defendant here doing anything.

Here the State rested its case.
State rests.

DEFENDANT'S EVIDENCE

Haywood Patterson, the defendant, being first duly sworn, testified in his own behalf, as follows:

Direct examination:

I was on the train with four boys. I was headed for Memphis. I did not have an intercourse with or have my hands on either one of those girls. I did not have a thing to do with them; I had nothing to do with taking their clothes off. I did not have a pistol. Neither one of the boys had a pistol. If either did, I did not see it. There were no shots fired. I saw one pistol there in the crowd, and the fellow that had it got off the train. Neither one of the boys back there had a pistol; I did not see either of them [fol. 32] with a pistol. I did not have a pistol, and I did not see either one of them with one.

I first saw these girls after the train left out of Stevenson, as the train was just leaving Stevenson. They were in a gondola car and when I first saw them I was up on top of a box car. I did not go down in this car where the girls were; I did not go down in that gondola car there. I was not in the car with the girls and had nothing to do with holding them, nor draw a gun on them. I did not even have a knife. The officers searched me. They did not find a knife nor a gun on me. I did not throw any away. I did not hold the girls. I have never been in trouble before. My home is in Chattanooga. My people live there. I have mother and father and a sister and a brother. I work there for the American Brake Shoe Company. I work there evening and help those fellows over there shake out.

Cross-examination:

I have lived all the time in Chattanooga. I never have been in Judge Fleming's Court; I have been in the court room. I have not been up for some violation. They have not had me arrested. They have not had me arrested up there. They had me once for late hours but not for prowling. They had me just for late hours.

I got on the train in Chattanooga; I had started to Memphis. All four of us were going to Memphis. I know three of the negroes, Roy Wright and Gene Williams and Andy Wright, but did not know the other one. I did not ravish that girl; I did not go down in the gondola, but stayed up on the box car and went back on the flat car. I was up there by myself. I did not see Norris up there with me; he was not up there with me. I heard him testify that I ravished her, but I did not do it. I did not help beat him up down at the jail at dinner. There was a fellow already in jail, and he had a piece of iron and he took the piece of iron away from him. Norris had the piece of iron. I did not beat him up down there, nor did I help to do it. When I was sitting up on the box car, I guess Norris was down with the other crowd; I did not see him. I saw a lot of men down there, about eleven or twelve men down there, all colored. Twelve were down in there and I made the thirteenth, and I stayed up on the car. I did not go down in there. I saw all but three of these negroes ravish that girl. I do not know none of their names that ravished the girl; Weems was one; I saw him ravish her. The fellow back there (indicating), I saw him down there; I did not see him ravish her; I saw him down there. I don't know what they were doing. There [fol. 33] were twelve down in the car and three of us up on top of the car. Roy Wright, Eugene Williams and Andy Wright were on top of the car with me. We four left Chattanooga together and we stayed together. While the others were down there in the car, we were sitting up on that box car. I do not know the names of the men down in the gondola. I did not say that there was one down in the Gondola where the girls were. I said there was about eleven or twelve in there with the girls, and three more sitting upon the top with me; that made four of us up there, and we had been that way from the time we left Chattanooga. I did not hear the girls scream. I saw one of them with a pistol. The one that had the pistol got out and got off right after we left Stevenson. He is the one I saw with the gun. I did not hear anyboy shoot a gun while I was in there. I did not hear any guns fired all the way around.

I did not see the girls crying nor hear them screaming, but I saw them all down in there. I could not tell you what they were doing down there; there was no scuffling in the car down there. There was gravel in the car they were in. I did not see any negroes on top of either one of those girls. I came back on top and sat down there with the other boys. I got away to where I could not see down in there.

When they arrested me down at Paint Rock, I was sitting on a flat car and the flat car was not next to the gondola these girls were in. There was another car in between them. I was not on the car they were when I was arrested; I was on the same car I left Chattanooga on. I went back to that car directly after they started the fight.

I saw some of the white boys put off the car. I could not tell whether any of them were bleeding when I saw them. They jumped down off the train. I did not see any negroes hit them.

I did not have anything to do with ravishing either one of the girls. I heard the girl testify. I did not even get down in that car. There were twelve in there and four of us on top; that would be twelve and two, or fourteen, negroes in the car and on top of the box car. There were twelve down in the bottom and four on top and five got off the train. I do not remember passing any station when I saw them in there. I did pass through here (Scottsboro), and at that time I was standing on the flat car, and one car was in between the gondola and the car I was in; that was a big box car.

When I saw the boys in there, I crawled up on top and looked over in there. I did not see the girls in there; I did not tell you a while ago I saw them; I did not see any girls. I did not see any girls in there until we got to Paint Rock. [fol. 34] The other fellows were doing the fighting in there, that the other fellows that were on the train; I did not know there names; they were colored. They were not fighting by themselves; they were fighting at the white boys, the white fellows who jumped off. All of them jumped off, every one of them; I saw every one of them jump out of the car; I was sitting back there. After they jumped off, I rode on to Paint Rock before I looked in that car. I was not looking down in that car all the time. I left the place and went back to the car I came out of Chattanooga on. When I left the place, a gang of colored fellows were in the car; no white fellows were in there at all; I did not see any white men in there. I did not see any white women in there until I got down to Paint Rock. I do not know what the white boys and negroes were fighting about; I did not inquire about that. I did not try to find out what they were fighting about. I saw all of the white boys, every one of them jump off the car and leave the car.

Redirect examination:

I was not with the other boys who took part in the fight. I saw the girls first at Paint Rock.

Roy Wright, a witness for the defendant, being first duly sworn, testified:

Direct examination:

My name is Roy Wright. I know this boy that just left the stand; I was on the train with him. I have a brother here that was on the train. He works in Chattanooga for the Lookout Furniture Company. My mother works there and has been working there a pretty good while. I am fourteen years old. I got on the train with this defendant at Chattanooga. Gene Williams, Andy Wright, the defendant and I all left Chattanooga together. We were intending to go to Memphis. They boy (defendant) did not have anything to do with those girls on that train. He was not down in the car with those girls; he was standing up on top of a box car. I saw a pistol. A long, tall, black fellow with duck overalls on; that is the only pistol I saw. This boy (defendant) did not have a knife. He did not open his mouth to the girls. I saw the girls on the train. They were on an oil car when I saw them. There were nine negroes down there with the girls and all had intercourse with them. I saw all of them have intercourse with them. I saw all of them have intercourse; I saw that with my own eyes. The defendant was not down there; he was never down there with the girls. The boys I left Chattanooga with were [fol. 35] named Haywood Patterson, Eugene Williams and Andy Wright.

Cross-examination:

I first saw the girls on the oil tank; that was up in Chattanooga before we left the yards. I was by myself when I saw the girls. They caught the oil tank in front of the car Haywood Patterson, Andy Wright and Eugene Williams were on and I caught a box car and walked over the box car and passed by that car the girls were in and walked on down to the oil car where they were. The girls were not in the gondola car then, but were in the oil car. I walked along the oil car until I got to where these boys were. When I got down there, I found three boys there. The others were away up further; I did not see the other boys until we got to Stevenson.

The girls rode the oil car down to Stevenson and then got off that car and got in this gondola, and then we boys got on the car together. They were fourteen colored boys on the car together. I had seen the girls in the gondola. I did not tell the fourteen boys the girls were on the train; I did not tell them anything; I saw the girls myself; I do not know whether the other boys saw them, too. We met the other boys in Stevenson. We did not talk about the girls.

I did not hear someone say, "Let's go down there." The way it was, those white boys, when we were laying back on the oil car, kept walking backward and forward across it and liked to have knocked the defendant off. When we left out of Stevenson coming this way, we were on a cross-tie car; we had gotten off the oil car. This cross-tie car was about three cars from the gondola these girls were in. We started on the gross-tie car from Stevenson. There were fourteen in the car when we started from Stevenson, all of us in the same car. There was nothing said about the girls being down in the gondola; we were talking about men. We knew that the men were down there, too. They had been passed by and we had a few little words. Haywood Patterson, Eugene Williams, Andy Wright and I were on the oil car and the white boys kept walking backward and forward and liked to have knocked Haywood Patterson off and Haywood said, "How come you did not ask me to move," and so the white man said, "What do you care?" and Haywood said, "I care a lot, I don't want to be knocked off," and the white man said, "We will settle it when the train stops." It was the white boy that said that. He was on the train and he went up and got some more white boys [fol. 36] and then the train stopped in Stevenson and they got off and went up in the gondola. The boys all got off and went up in the gondola. The white girls went up there with them, I guess, or they were up there. The negroes all got on a cross-tie car and stayed there. I was on the cross-tie car, all fourteen of us on the cross-tie car. The cross-tie car was not the next car to the gondola, but was three cars from it. We all got on the cross-tie car. After the train started off, the first one of the white men came over, the one that had on a big, black belt, and we were telling the other boys about it, that they were intending to put us off, that is that the white boys were intending to put us off, but we overpowered them and put them off; that occurred down in the gondola. We all made it up among ourselves to put them off; we made it up while we were over there on the cross-tie car, and after we all had made it up among ourselves to go over and put the white boys off, we all came along the cross-tie car and got over the box car and jumped down in the gondola. I did not put any of the white boys off, but the little boy and I saved the life of one of them. They were intending to put him off and every time his feet would hit, it would throw him in between the cars, and we took pity on him and told him we would let him alone, and they reached down and pulled him back up and he got on the gondola and Haywood, Eugene and Andy went back over the top and left the rest in there, and I was sitting up on the box car, together with Patterson. He and I were on one box car and Eugene and Andy on the other one. I was sitting there looking in on the gondola, but Andy, Haywood and Eugene were not. Haywood was sitting as far as that man (indicating) from me and the others were back on the other box car. Andy went down in the gondola when they were putting the men off; it was not at Paint Rock, but right after the train left Stevenson; that is not Andy Patterson sitting right there (indicating); his name is Haywood Patterson. We all went down in there when we went to put off the men. Patterson went down there with us; all four of us went down in there to put them off. I was in the gondola when I told them not to throw him off but to bring him back.

The long, tall black fellow had the pistol. He is not here. I saw none of those here with a pistol. I saw five of these men here rape the girl. After we put the men off, we went back on the box car and I was sitting up on the box car holding to that wheel, looking down at them. I did not tell the officers I saw everyone rape her but me. I did not tell them that. I did not tell them that I saw the defendant [fol. 37] rape her. I did not see the defendant rape the Bates girl. I did not see him do anything except he just helped put off the man. He was putting them off because they kept stepping across him and talking about putting us off. I saw one knife down in there. That boy back there (indicating) had it, Eugene; he is the one that had the knife. I did not see him hold it on the throat of that girl. He did not have hold of her throat, because he was sitting up on the box car. I saw one down in the gondola, a little white-handle knife. Clarence Norris had that knife; I do not know where he got it; I do not know what he did with it. He had it the last time I know anything about it. I am sure the defendant did not do anything.

(Thereupon the further hearing of this case was adjourned to 8:30 A. M. April 8, 1931).

Adjourned.

Morning Session, April 8, 1931

Andy Wright, a witness for defendant, being first duly sworn, testified:

Direct examination:

My name is Andy Wright. My home is in Chattanooga, Tennessee. I work for the B. L. Tally Produce Company and have worked there for them for five years. I will be nineteen years old the 23d day of this month. When I boarded the train in Chattanooga, I was with Eugene Williams, Haywood Patterson and Roy Wright. I boarded the freight train on Twenty-third Street, in Chattanooga. We were going to Memphis, Tennessee. Haywood Patterson and I got on an oil tank. I did not see any girls on the train. I did not know any girls were on the train; I had not seen them. I was at Paint Rock when I first saw the girls.

I was riding on an oil car. I was on a box car a part of the time. We ran across the other boys at Stevenson. They got on at Chattanooga, I reckon; I first saw them at Stevenson. There were fourteen of us in all, and four of us. I went down in the gondola car when the fight started up there. There were some white boys and some colored boys fighting. Fourteen of us went down in there when I went down in there. The white boys started the fight. It started from one of the bous passing by Haywood Patterson and liked to have knocked him off and Haywood asked him if he had asked him he wanted by he would have got up and let him by; that was on the oil car and before we got to Stevenson; he said to Haywood, "What difference did it make if he knocked him down?" and he said when the train [fol. 38] stopped he would settle it, and when the train stopped, we got off the train and came up by a gravel car.

There were seven white boys and fourteen of us. The boys were not thrown off this oil car or tank car. Some of them jumped off and some climbed off. I did not see a pistol at all. I did not see any knives. The defendant here, Haywood Patterson, did not have anything to do with any girls on that car, nor did anyone on the train. If he had, I would have seen him. All four of us were sitting back there. He was not armed with a pistol or knife.

Cross-examination:

My name is Andy Wright. I know the defendant over there; I have known him about three years. I knew he was on the train when I got on at Chattanooga. There were four of us. Three of us got on the oil tank and Roy Wright could not catch the oil tank and got on a box car. I did not see these girls until we got to Paint Rock; I did not see them get on the train up there in the yards. I did not see them down at Stevenson, when we all got off the train there. I told counsel for defendant awhile ago I was in the gondola where the fight occurred; I was in there when the fighting was going on; I did not take part in the fight. One of the boys holl*ow*ed and I went down there to see what was the matter. I had to go and jump in the gondola before I could find out what was the matter. When I saw them in the gondola, I saw them fighting. They did not put the white boys off; they made them get off. I was in the gondola at that time. I did not see the girls in that car, the gondola.

I did not see anybody on top of those girls.

(Witness is handed a knife.)

I know whose knife this is; it is Eugene Williams' knife. I know that, because I saw it in Chattanooga; I saw it in Chattanooga before I came down here. I did not see it that day. I did not see it on that girl's neck while the defendant was on top of her; I did not see that. I did not see the girls in the gondola. I never saw a negro have anything to do with that girl in the gondola; I swear that to that jury.

Eugene Williams, a witness for defendant, first being duly sworn, testified.

Direct examination:

I am Eugene Williams. My home is in Chattanooga, Tennessee. I have lived there all of my life; I am fourteen [fol. 39] years old; I do not work up there; I have not been working. I was with Patterson and Andy and Roy Wright. I got on that train at Twenty-third Street, in Chattanooga. I caught an oil tank. Three of us caught an oil tank and Roy Wright could not catch it and he climbed up on a box car and came down there where we were. The gondola was about three cars from the oil tank. I did not go over to the gondola until the white boys started the fight. At the time the fight started, the train was coming up the grade about fifteen miles from Chattanooga. The fight started then and they said they were going to put us off when the train stopped and the train did not stop until we got to Stevenson. The fight was not going on when we got to Stevenson; it did not start until we got about a mile and half out of Stevenson. We started up to the gondola when the train stopped and got over the top. I did not see the girls in that gondola car.

The defendant, Patterson, did not have anything at all to do with those girls. If he had, I would have seen him. I saw one pistol, and the boy that had it had on duck overalls, a black boy. He went off the train. There was no shooting going on. I had a knife myself, but I kept it in my pocket. My knife is the one that was just shown the witness, the boy who was just on the stand. He saw that knife before I left Chattanooga; he was with me there and saw it.

Cross-examination:

(Witness is handed knife.)

This is my knife. All four of us got on the oil tank in Chattanooga. The defendant, the two Wrights and myself. My name is Eugene Williams. This is my knife. I did not let anyone have this knife. I had it at all times until the officers took it off my person; I did not hand it to anybody. I did not hold this knife over that girl's neck while they were ravishing her. This knife was not used by anybody that did have it. This is my knife; I kept it in my pocket all the time. I did not go down in the gondola until the boys got in a fight. When I left the oil tank to go down in the gondola, I knew there was a fight going on. The white boys started the fight on the train about fifteen miles out of Chattanooga; that was not on the gondola, but on the oil tank. There were about three cars between the oil tank and the gondola. They just started the fight coming from Chattanooga; that was on the oil tank. I went down to the gondola to end the fight. I did not know, while I was on the train and on the oil tank, that they were fighting down in the gondola. I went down there to end the fight. I went down there to keep them from throwing us off. I went and hunted up the white boys to end the fight [fol. 40] to keep them from throwing us off the train. They were fixing to make up a plot to throw us off. When this boy asked Patterson, "What you got to do with it?" Patterson said, "I have a lot," he wanted to get by and he said he was going to settle this when the train stopped. The white boys said that. The train stopped at Stevenson. The white boys did not come back up there and start it over, but when the train started out from Stevenson, we all went up there, but I did not hear any fighting going on in the gondola. I went up there to fight, and that is what I did. We all got down in the gondola, but did not see any girls in there; I did not see anybody both the girls. I did not see the girls. I swear to the jury that the girls were not in that gondola.

Olen Montgomery, a witness for defendant, being first duly sworn, testified:

Direct examination:

I live at Monroe, Georgia. I was not with the defendant and the others with him. I did not see them until we got to Paint Rock. I first saw him there. I did not see him on the train as we left Chattanooga; I saw several other boys up the line first; I could not tell you who they were, though. I know nothing about the fight that took place on the train. I was back the seventh car from the end of the train, on an oil tank between two box cars. I first ran across the other boys at Paint Rock. I had not seen anything of the fight on the train; I did not see that; I was not in the gondola car. I could not see the gondola car or inside of it from where I was unless the train would go around a deep curve. I do not know anything about the fight.

I did not know a fight had taken place before this train got into Paint Rock. I do not know how many colored boys were on that train. When the officers took me in custody, I was right down by the car I got off of; I started walking up the track and walked right into the man. I did not know any of these other boys. I did not see any knives or pistols. I saw the officers search these boys, after we got to Paint Rock. They took a piece of a pocket knife off of me but nobody knew I had it. They did not take it off of me; I gave it to them. I did not see any pistols. I do not know where this defendant was on the train; I do not know whether he was down in the gondola or not. I could not say whether any of them were down in [fol. 41] the gondola or not, I don't know.

Cross-examination:

My name is Olen Montgomery. I came from Georgia. I can hold my eyes up. There is something wrong with my eyes; one is weak and one is out. I claim that I was on the oil tank all the way from Chattanooga down to Stevenson. Nobody else was on the oil tank with me. I do not know the gondola they claim this fight occurred in; I do not know where it was. I do not know how many cars it was from mine; I was in the seventh car from the end of the train. I do not know where the gondola was that they had the fight in; I was not about the gondola. I was not with any of those negroes from Chattanooga down to Stevenson; I was by my lonesome. Nobody talked to me. I did not get off at Stevenson. I did not see any negroes nor any white boys at Stevenson. I was by myself. I was not hidden. I do not remember, when I ran at that girl, that I told the other boys, "You keep all of them back now and let me to her." I deny that I ravished that girl. I deny that I saw the girl. I was not in the gondola. I had nothing to do with the fight and know nothing about it.

Redirect examination:

I do not know how many oil tanks there were in that train.

HAYWOOD PATTERSON, the defendant, being recalled, testified in his own behalf as follows:

Direct examination:

I saw as high as two oil tanks in that train. They were not together.

Cross-examination:

I was not up and down the train. I caught the train at Twenty-third Street in Chattanooga. Andy Wright, Roy

Wright and Eugene Williams were with me at that time. Eugene Williams is not one that was just on the stand a while ago. He has been on the stand; he was on the stand this morning. We are the four that were on the oil tank; that was about two cars from the gondola, where the fight occurred. I did not see this negro Montgomery anywhere around there; I did not see him. He was not down there in the fight; I did not see him. I do not know him; I don't [fol. 42] know anything about him. I would not know him if I saw him. A box car was the next car to the gondola, and next behind that was a flat car and an oil tank. Cross-ties were on the flat car; it wasn't a gondola, just like the other one with cross-ties in it; it was a flat car, and the next was an oil tank. I did not go up and down that train up there in Chattanooga. I did not see this negro Montgomery at all anywhere; I do not know anything about where he was. I was down in the gondola; I went down there after we left Stevenson. I helped in the fight, still I never saw Montgomery down in there, and no negro that looks like him. When I got in the gondola, there were fourteen negroes with me in there. We did not make up to go down in there and run the white boys off. They were making it up themselves to beat us off. I know that because they said so. They said, when we left out of Chattanooga, they were going to put us off. I do not know which white boy said that, one of them out there, I think; I don't know which one out there it was. I could not describe the one that said that. He was a little boy; that was not while we were on the ground in Chattanooga, but after the train had left out of Chattanooga. When we were about fifteen miles out of Chattanooga, they said they were going to put us off, and they kept running backward and forward across me and liked to have knocked me off, and I asked him to ask me when he wanted by and I would get up and let him by, because it was an oil tank and it was all a fellow could do to set down on there, and that is the time he asked me what was my part about it, what did I care about him running off, and he said he was going to put me off when the train stopped. They left us in the oil car, but I do not know where they went. When we made it up to go down and put them off, we went to the gondola, all fourteen of us; four went down there; some were already down there. We four then went down there. We had to come over the box car to get down in there; we came over the box car and jumped down in there. Those four were Eugene Williams, Andy Wright, Roy Wright and myself. I did not see anybody up on top of the car after I got in there; there was nobody up there. Not all of us were fighting in there; some were fighting; I did not help to put the boys off. The boys were surrounded; I could not — a chance, but that is what I went down there for. I looked around in the gondola; I could see all over it, but I did not see any women in there. I was in the gondola when it got to Paint Rock, but I did not see any women in there. There were no women in [fol. 43] the gondola, and none there when I got to Paint Rock.

Ozie Powell, a witness for defendant, being first duly sworn, testified:

Direct examination:

I live at Atlanta. I do not know the defendant, Haywood Patterson; I don't know anyone but Willie there. I first saw Patterson at Paint Rock. I did not know the girls were on this train until I got to Paint Rock. The defendant did not have anything to do with those girls or any girl on that train; I know that, and if he had, I would have seen it. When the fight started, I was down between the gondola car and the box car and the fight was in the gondola car. I do not know how many white boys were there, nor could I say how many negroes were there.

I did not see any knives or pistols; they *they* were there, I did not see them. I did not hear any shooting. The first time I saw the defendant he was in the gondola at Paint Rock. I was riding between the gondola and box car when the fight started; I did not have anything to do with the fight; when it started, I got up on this gondola car and walked to the back end and got down between the other gondola car and the box car.

Cross-examination:

I know the gondola they had the fight in. When I started out of Chattanooga, I was between the gondola and the box car. I did not see any negroes coming across from the box car into the gondola after I left Chattanooga. When I saw them first, I climbed up on the gondola car and they were then fighting. I rode from Chattanooga down to Stevenson between the gondola the girls were in and the box car; I did not see any negroes from Chattanooga to Paint Rock climb from the box car over into the gondola; I was on the other end and they climbed on this end, I guess, but none of them climbed from back this way; I was on the front end of the gondola, and there was a box car on the front and next to the gondola and I was on that end. I did not see any negroes coming over the box car into the gondola from the back end. I could not see all right; I could not see any further than my head. I did not look into the gondola until I saw one of the white boys getting off and then I climbed up on the steps and saw the fight and then got in the gondola and walked between the other box car and the gondola and got down between them. [fol. 44] I did not see any girls in there where the fight was going on; I went from one end to the other and did not see a girl in there at all.

I was this side of Stevenson when I went through that car; that was while they were all fighting. I could not tell you who was doing the fighting; I did not know who they were. I was trying to get out of the way. I left the front end of the gondola and went to the back end of it because the white boy was getting off there; I just moved to give them room to get off. I did not have anything to do with this girl. I did not see the girls; I did not see anybody ravish her. I was riding there at one end of the gondola from Stevenson to Paint Rock; I was not looking in; I did not see inside until I crossed over and went across there and get down between there; I did not see inside then until I got to Paint Rock; I got up under that little, old flat and got up on the side of that. I did not have anything to do with the girls; I did not rape one of them myself. I do not know a white boy named Gilley; I did not have my knife on a white boy's throat while the fighting was going on; I did not have a knife at all; I did not have anything to do with the fight. I did not see Olen Montgomery until we got to Paint Rock. I did not see the defendant until we got to Paint Rock; I did not see either one of the Wright boys; I saw a gang in the box car, but I could not tell who they were—not in a box car, but in the gondola where the fight was going on; I saw the fighting going on, but did not see any girls in there; I tell the jury I did not rape one of those girls.

Here the defendant rested his case.
Defendant rests.

Rebuttal Evidence—State

Victoria Price, a witness for the State, being called in rebuttal, testified:

Direct examination:

I saw the two Wright boys that came around on the witness stand, and also Olen Montgomery, the defendant, and the last witness here, Powell. They were all in the gondola. I stated that this defendant is one that raped me. This one here (indicating) held the knife on Gilley while the defendant raped me; there were two back there holding him and he was one of them. I saw this negro Powell; he was in the car when this defendant raped me, I mean the de-
[fol. 45] fendant that is on trial.

The above and foregoing was the evidence, and all the evidence adduced upon the trial of this cause.

Charge to Jury

Thereupon the court charged the jury orally as follows:

"Gentlemen of the Jury: Let me have your attention for a few moments and we will finish the trial of this case.

The defendant, Haywood Patterson, is on trial before you under an indictment that charges that he forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

That charges rape under our statute. The law, gentlemen of the jury, that defines what it takes to constitute rape is as follows:

"To sustain an indictment for rape, proof of actual penetration is sufficient when the act is shown to have been committed forcibly and against the consent of the person on whom the assault is made."

Forcibly and against the consent of the person on whom the assault is made. That, gentlemen of the jury, if actual penetration is made, constitutes rape.

The state in this case insists that this defendant some time ago, whil- he was passing through this county on a freight train where this prosecutrix was, that he then and there forcibly had intercourse with this prosecuting witness, that he used force and that it was against her consent. Well, if that is *ture*, gentlemen of the jury, if you are convinced of that beyond a reasonable doubt, of course the defendant would be guilty of rape.

The defendant in answer to this indictment, gentlemen of the jury, says he is not guilty. What has that to do with the case? When any defendant, gentlemen of the jury, charged, as this defendant, with this offense, or any other offense, pleads not guilty, that puts the burden of proof on the State to satisfy the jury from the testimony beyond a reasonable doubt of the defendant's guilt, before he can be convicted. He comes into court with the presumption of innocence in his favor. This defendant comes into court [fol. 46] with the presumption of innocense in his favor, and that presumption remains with him throughout the trial of the case till the jury from the testimony is convinced of his guilt beyond a reasonable doubt. The indictment is no evidence against the defendant and is not to be so considered by you; it is only a method by which the defendant is brought to trial before you.

You, gentlemen of the jury, are the sole judges of the testimony; it is not for me to say or to suggest what I think of the testimony of any parties or any witness testifying in this case; that is for you to determine from all the testimony as to whether or not the defendant is guilty beyond a reasonable doubt.

You may consider the testimony of the witnesses and the parties, and the defendant in this case, in the light of their interest, their reason for knowing or not knowing the facts about which they testified. You may take all that into consideration in determining what will be your verdict in this case.

The law, gentlemen of the jury, in regard to the offense of rape, is short and simple. It must be forcibly and done against the consent, where it is acomplished, of the person assaulted. You are not to be influenced, gentlemen of the jury, by anything except the testimony in this case. When you are, gentlemen of the jury, you are not performing the duties that your oaths bind you to perform. The oath you took in this case is that you would well and truly try the issues and a true verdict render according to the evidence, and that binds you in the performance of your duty throughout this trial. Take the testimony and go to your jury room and consider it and make up your minds from this testimony delivered on the witness stand, and that alone, and then do what you think is just and right; of course, let your oaths as jurors bind you in that performance. So, gentlemen of the jury, that is this case.

It is necessary for me to outline to you the extent of the law or offenses covered by this indictment. It charges in terms, gentlemen of the jury, the offense of rape, but by implication of law and offense of an assault with intent to rape and an assault and battery is also covered and embodied in this indictment. In other words, if you are not convinced of this defendant's guilt of the higher of offense of rape, you may, if you are convinced of an assault with intent to rape beyond a reasonable doubt, find him guilty of that, or of a simple assault, or an assault and battery.

[fol. 47] Gentlemen of the jury, the punishment for rape under our law is death or imprisonment in the penitentiary for not less than ten years—punishment by death or imprisonment in the penitentiary for any number of years not less than ten. The punishment for an assault with intent to rape is imprisonment in the penitentiary of this State for not less than two or more than twenty years, and the punishment for an assault and battery is a fine of not more than five hundred dollars.

If you are convinced of the defendant's guilt of rape, as charged in the indictment, this is the form of your verdict: "We, the jury, find the defendant guilty of rape, as charged in the indictment, and we fix his punishment at death, or at imprisonment in the penitentiary for *for* —" so long, naming the years, not less than ten.

If he is guilty, gentlemen of the jury, of an assault with intent to rape, it is: "We, the jury, find the defendant guilty of assault with intent to rape, as charged in the indictment", and the punishment is with the court. The punishment for an assault and battery is a fine of not more than five hundred dollars, and is: "We, the jury, find the defendant guilty of an assault and battery, as charged in the indictment, and we assess a fine against him of —" so much, not more than five hundred dollars; and if he is not guilty, the form of your verdict is: "We, the jury, find the defendant not guilty".

In either event, one of your number sign your verdict as Foreman.

Show them to the jury room, Sheriff. Retire, gentlemen, and make up your verdict.

Thereupon, on the 9th day of April, 1931, the defendant, Haywood Patterson, filed in said cause and spread upon the motion docket of said court a motion to set aside the verdict and to grant the defendant a new trial, which said motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON

PETITION FOR NEW TRIAL

Comes the defendant and moves the court to set aside the verdict of the jury in this cause for the first, the court was in — — refusing to grant defendants petition for a change of venue removing his trial to some other county upon the grounds set out in said petition.

[fol. 48] 2nd. For that while he was on trial the jury, who has in charge the cases of Clarence Norris and Charlie Weems came into the court room making their report the death penalty. That the jury in the defendant's case were removed to the jury room some twenty feet from the bar and door closed, but the transom of said room partly open, which conditions permitted the hearing of any demonstration in the court room. That on the report of said jury, a most tremendous demonstration took place all over the court room by shouts and clapping of hands that could be heard for a hundred yards about the court room. That immediately the shouts were taken up in the court yard. That said applause of the Jury was so great that the court ordered the National Guards who were on duty to quell the demonstration, which was done, and the Jury only a short distance away as stated were bound to have heard all and probably influenced them in their verdict.

Roddy & Moody.

[File endorsement omitted.]

Thereupon, on the 6th day of May, 1931, the defendant, Haywood Patterson, filed in said cause and spread upon the motion docket of said court, an amended motion to set aside the verdict and judgment rendered in said cause and *go* grant him a new trial, which said amended petition is in words and figures as follows, to-wit:

In Circuit Court of Jackson County

State of Alabama

vs.

Haywood Patterson, Defendant

Amended Motion for New Trial

Comes the defendant, Haywood Patterson, in the above styled cause of the State of Alabama, vs. Haywood Patterson, and moves the court to set aside the verdict and judgment rendered in this case No. 2402 against him on the 7th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant him a new trial, and he assigns the following reason and causes separately and severally, to wit:

I

Because the indictment was too vague and indefinite and stated no cause of action, and failed to put the defendant [fol. 49] on notice of what he was called upon to answer, and the judgment ought to be arrested, and a new trial granted, because it was void and illegal.

II

Because the court erred in failing and refusing to grant this defendant a change of venue and to remove the hearing to some other county, because in a trial involving human life, the defendant has a right to be tried by a jury entirely free from bias or prejudice, and free from outside or extra-legal influences which might distract their minds from a free and impassionate consideration of the merits of the case.

III

A new trial should be granted because the court refused to grant this defendant a special jury or a special venire of jurors on the demand made by his counsel and when it was then appearing necessary to have military guards to guard the prisoner and the court house, and when the rights of the defendant were being jeopardized by presenting to him a list of jurors from which his jury was drawn in contravention and in violation of the jury laws of the State of Alabama as is provided by the Statutes of Alabama.

IV

The court erred in failing to continue this case of his own motion when the jury in the case against Norris and Weems jury reported its verdict and there was a demonstration in the court house.

V

The court erred, in not questioning and in failing to qualify the trial jurors as to race prejudice, as to whether or not they could and would give the defendant a fair and an impartial trial, and calling the attention of the jurors to the fact that he was a colored man and the prosecuting witness, Mrs. Price, was a white woman; if it had appeared that any juror held prejudice, or caprice, such juror should have been discharged from jury duty.

VI

The court erred in not explaining to the jury that while there was a custom prevailing in this state not to have jurors who are negroes, that under the laws of the State of Alabama, negroes in certain cases were eligible for jury duty, and that under the laws there was no bar against their service, and that while under the custom prevailing to select only white men for jury duty, that a colored man, [fol. 50] had the same legal right to fair and impartial trial that was accorded to white men.

VII

A new trial should be granted, because public sentiment and feeling against the defendants and the crime charged were of such a character, and publications thereof throughout the northern part of the State and in Tennessee and Georgia, that defendant could not get a fair and an unbiased jury.

VIII

A new trial should be granted because the proof in this record and certain affidavits procured, sworn to by parties and filed, that the train on which Victoria Price and Ruby Bates claim to have been riding, had on it some twenty or more negro boys and about seven or eight white boys and that between the time of the fight that is alleged to have occurred in the neighborhood of Stevenson, Alabama, and the time that this train reached Paint Rock, Alabama, was about forty or fifty minutes and that about one-half of the negro boys had left the train between the time it passed Stevenson, Alabama, and the time it reached Paint Rock, Alabama, and it is alleged that all this trouble occurred while this train was in Jackson County, Alabama, and if this be admitted for the sake of argument, the time was too short for everything to have happened as contended for by these two girls, and when half of the negroes were not arrested, that it is impossible for them to identify positively all of the crowd and to make this proof beyond a reasonable doubt.

IX

A new trial should be granted because the Court failed to declare a mistrial in the case of Haywood Patterson, because while his case was on trial, a jury in the case of Norris and Weems made its report to the court, and when the report of the jury was made, there was a demonstration in the court room by the clapping of hands and stamping of feet and hollering in approval of the verdict against Norris and Weems. Immediately thereafter the report passed from the court room to the streets that Norris and Weems had been convicted and thereupon there was a demonstration on the streets in the town of Scottsboro and men were hollering and yelling and this street demonstration pervaded the business section surrounding the court house square where the jurors and court officers and military officers were assembled. This demonstration was calculated to prejudice, and did prejudice, the mind of the jurors who were sitting [fol. 51] on the case trying Haywood Patterson, and it also prejudiced the jurors who were soon thereafter to try the five other defendants and made it impossible for any of the defendants to obtain an unprejudiced, impartial and unbiased jurors in their cases.

X

A new trial should be granted because of newly discovered evidence showing that Victoria Price and Ruby Bates were women of bad character and from their general reputation that they are not entitled to full faith and credit on their oath in the Court of justice.

XI

A new trial should be granted this defendant because the jurors were not sent off the court room during the preliminary discussion of this case between the Court and various attorneys appointed by the Court to represent the defendants. This discussion between the Court and counsel, and some remarks during the discussion, was calculated to and may have prejudiced the jury.

XII

A new trial should be granted because the constitutional rights of the defendants were violated in that Article 14, Section 1, of the amendment of the Constitution of the United States, which provides, "No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws", and the rights of this defendant were violated under the Constitution for the following reasons:

(a) He was arrested and had no fair chance to employ counsel or to communicate with his family or friends; (b) He was placed in a jail in a distant city from his home where his parents or kinsfolk were afraid to visit him on account of their fear of personal violence; (c) because he had no opportunity to employ and make financial arrangements to pay an attorney to represent him; (d) because there was not sufficient time between the time he was arrested and the time of his trial to prepare the case for trial; (e) because of racial prejudice prevailing in the county where the trial was held, he was denied a fair and impartial trial before an unprejudiced and an unbiased jury; (f) because while his case was on trial, a jury in another case reported convicting two defendants accused in the same matter and there was a [fol. 52] clapping of hands and hollowing and a demonstration in the court room while the jury in this defendant's case was in an adjoining jury room; (g) Because there was a demonstration in the streets outside of the court house while this case was on trial, as a result of the conviction of Norris and Weems; (h) because of the ignorance of this defendant and his immature years, he did not know how to prepare for a trial, or how to get his witnesses to the court, and being a man of color and unacquainted and uneducated and ignorant of the law; (i) because he had been threatened and intimidated and thought his life was in eminent peril, and he could not get in communication with his father or mother to employ him an attorney or to advise him about his rights until the case was called for trial and therefore the verdict returned by the jury and the judgment entered thereon are in violation of his *constitution* constitutional rights of the due process of law clause of the Constitution of the United States, and a new trial should be granted.

XIII

A new trial should be granted because the constitutional rights of this defendant, as guaranteed by the Fourteenth

Amendment to the Constitution of the United States were violated in that he is about to be deprived of his life and liberty without due process of law and is being denied, within the jurisdiction, the equal protection of the laws in that he was tried without reasonable opportunity to prepare his case and without time to employ counsel to represent him, and he was tried in a county where a mob had assembled and threatened to take his life and the Sheriff and the Governor deemed it necessary to call out a military force to guard this defendant from the jail to the court house and to surround and guard the court house during the time of the trial and go guard him after the trial back to the jail to prevent an effort being made to take his life.

Under stress of great excitement against the defendant, and others indicted with him, and in view of the charge of rape made against him and publication thereof in the newspapers in bold headlines, there was such prejudice, caprice and passion prevailing in the County and throughout adjacent counties near the trial as to render the verdict of the jury and the judgment thereof illegal and void and for these reasons a new trial ought to be granted.

[fol. 53]

XIV

A new trial should be granted because there is no legal evidence to support the verdict of the jury and the judgment entered thereon and the evidence pr-ponderates against the verdict of the jury in this case.

XV

A new trial should be granted because of newly discovered evidence which has been discovered since the trial of this case, and which the defendant did not know and could not discover before the trial, tending to prove that he is innocent of the charge made against him and tending to prove the bad character of the two prosecuting girls, and tending to prove that there was twenty or more negroes on the train at the time of the alleged trouble and that a number of those involved in the trouble left the train and were never arrested.

XVI

A new trial should be granted in this cause not only for the reasons stated in the foregoing motion for a new trial, but because when the defendant was arrested, it created such excitement and passion and rumors in the neighborhood where the trial was to be had as to make it impossible for him to get a fair and impartial trial and that he was denied a fair and impartial trial as contemplated by the due process clause in the Fourteenth Amendment to the Constitution of the United States, which provides, in part, "that no state shall make or enforce any law which abridges the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The defendant is a negro of African descent, born in the United States and a citizen of the United States and subject to the jurisdiction thereof.

XIX

A new trial should be granted because of newly discovered evidence discovered since the trial in this case and which the defendant could not discover because he was in jail in the State of Alabama, and these witnesses were principally in the State of Tennessee, and this defendant, Haywood Patterson, had no chance to talk to his parents or friends and that he had no attorney hired to represent him and no one with money who is able to make a search for testimony and that he used all the diligence that he could but was utterly helpless and his parents lived in the [fol. 54] State of Tennessee and on account of public demonstration, were afraid to come to see the defendant for fear of personal violence.

Said newly discovered evidence tends to show that Ruby Bates and Victoria Price were girls of bad reputation and unworthy of belief and that their associations and character was of such a nature and to totally and thoroughly discredit anything either of them might say or swear on the witness stand, and that if this proof had been before an impartial jury that a different result would have been obtained as a result of the trial, and that upon another trial said witnesses could be produced in court.

Said testimony is set out in full in the affidavit of Oliver Love, marked Exhibit No. 1; McKinley Pitts, marked Exhibit No. 2; Isaac Hinch, marked Exhibit No. 3; J. P. Hobby, marked Exhibit No. 4; Annie Linson, marked Exhibit No. 5; Asbury Clay, marked Exhibit No. 6; Savvannah, marked Exhibit No. 7; Willie Douglas, marked Exhibit No. 8; Tom Landers, marked Exhibit No. 9 and Silas Johnson, marked Exhibit No. 10, and an exhibit to the affidavit of Silas Johnson, being a newspaper with a photograph of Victoria Price and Ruby Bates which is exhibited to Johnson's affidavit as Exhibit No. 1 and filed herewith and all of said affidavits and said exhibits are made a part of this motion as fully as if set out herein.

XX

A new trial should be granted in this cause and the judgment arrested because the indictment failed to state any cause of action and it failed to notify the defendant, Haywood Patterson, of any criminal charge made against him and failed to put him on notice of the charge he was required to meet on the trial of this case, and for this reason the verdict should be arrested and a new trial awarded.

XXI

A new trial should be granted because under the constitution and laws of the State of Alabama the defendant was entitled to notice in the indictment and was entitled to be given a statement of facts in the indictment such as is required by the constitution and laws of the State of Alabama, and the indictment in this case did not contain such a statement of fact as are required under the constitution and laws of the State of Alabama.

XXII

A new trial should be granted because on the trial of this case, counsel for the defendant asked the prosecuting wit-
[fol. 55] ness, Victoria Price, if she practiced prostitution in order to show her character and her credibility and the court committed error in refused to permit counsel for the defendant to pursue this line of examination, which would have developed that she was a common prostitute and that she was unworthy of belief. (Affidavit is filed herewith as a part of this motion.)

XXIII

A new trial should be granted, because the court committed error, in refusing to permit counsel to interrogate the prosecuting witness Victoria Price, touching her character and reputation as a common prostitute, and evidence of previous acts of prostitution, on her part, should have been admitted to go to the jury in mitigation of punishment, especially where, as in this case, the punishment is fixed in jury's discretion from 10 years to death. (See affidavits filed herewith touching Victoria Price's reputation and character).

XXIV

A new trial should be granted because a special venire was demanded for this defendant and refused by the court and because a list of all jurors drawn for the week and those especially drawn must be served, together with a copy of the indictment, forthwith upon the defendant, and the record fails to show that this was done, and this being a capital case that was an error for which a new trial should be granted.

XXV

A new trial should be granted because the court committed error in refusing to permit counsel for the defendant to ask the doctor that examined Victoria Price as to whether or not she had a venereal disease, and the court ruled this incompetent and sustained the State's objection. This was error, her condition in this respect was a material matter and the subject of legitimate inquiry.

XXVI

A new trial should be granted because the court failed to charge the jury, and law as to consciousness of innocence, shown by the fact, that if this defendant had committed rape knowing its penalties in the South, and the swiftness with which it is applied, this defendant instead of leaving the train and fleeing, he remained on the train, which was a circumstance consistent with his innocence and made no effort to flee, and the fact that his actions tends to prove he was innocent, should have been charged and explained by the court to the jury, and the failure to do so was error.

XXVII

A new trial should be granted, because the State had under arrest several boys who were on this train and one witness named Gilley was named on the indictment, and one of them were examined in this case, and if they would have supported the prosecuting witness Mrs. Price, the State quite naturally would have examined them, on the trial, and its failure to do so was error, and for this reason it throws suspicion on her testimony whereas the witness might have corroborated her. He did not do so, and no reason given for not examining him.

XXVIII

The State had within its power a number of boys that were alleged to have been on this train at the time of the alleged rape and no one of them introduced in this trial. This circumstance indicates and gives rise to the presumption that if they had been willing to tell the same story as Mrs. Price, they would have been introduced, and the very fact that they were not introduced and not permitted to testify gives cause to believe that they might have benefited the defendant if put on the witness stand and required to testify.

G. W. Chamlee, Attorney*s* for Patterson, Defendant.

Exhibit "A" to Motion for a New Trial, Case State of Alabama vs. Haywood Patterson

Affidavit of Oliver Love

Oliver Love, makes oath in due form of law that he and his wife are colored people and run a rooming house in 1929, and part of the year 1930 and they are personally acquainted with Ruby Bates and Victoria Price, two white girls who claimed that their people lived at Huntsville, Alabama, and he has seen a picture published in the papers and that he recognizes that picture as a picture of Ruby Bates and Victoria Price, in connection with the alleged ravishing case, at Scottsboro, Alabama, and involving Haywood Patterson and eight other negro boys.

Affiant Oliver Love further states that in 1929 that these two girls engaged rooms in his rooming house and that they made a practice of coming to their rooms in company with me, and that on many occasions they would entertain negro men in their rooms all night and both the man and the girl would come out the next morning and admit that they had spent the night in the room together.

[fol. 57] These girls had separate rooms and one bed in each room and they would bring different men in their rooms at night and spent the night there, and they would each girl have her own company in her own room, and it made no difference whether she slept with a white man or a negro to her, and they would both get drunk and they danced with and embraced colored men, and would hug them and kiss them, and one one occasion in the early part of 1930, Ruby Bates was at my house and she ask- me to help her make some money and she explained to me that she wanted to meet and have intercourse with three men that afternoon, and said she could make some money and that pay-day at the Casey & Hedges Shops in Chattanooga, and I let her have a front room of the rooming house and three men came and visited with her in that room that day and they were all three negro men who worked at the shop but had gone home and changed clothes and washed up.

After this meeting with three men in one day, Ruby Bates made arrangements that if one of these men wanted to see her, he would come down on the corner of Twenty-third and Fort Street in the City of Chattanooga, Tennessee, and that if she had a man in her room, when that man left she would stick her head out of the window for the next man to come on up to her room, and in this way she had a great number of men visit her in her room and entertained them there from time to time and this practice at different times was carried on by her for many months, in the latter part of 1929.

Victoria Price frequently met and entertained negro men in her room and eat her lunches there and she had a great many negro men meeting her there, and because of the need of money, we permitted this traffic to go on for a long time and it became known all through the community where we lived and these women were common prostitutes.

They were visitors of bootleg joints, saloons, bawdy houses and houses of ill-fame and they practiced prostitution and smoked and drank and indulged in profanity and vulgar language.

Their general reputation- were bad and they were unworthy of belief, from their general reputations.

Oliver Live.

Subscribed and sworn to before me, May 2, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, '35.

[fol. 58] EXHIBIT "B" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of McKinley Pitts

McKinley Pitts makes oath that he is a citizen of Chattanooga, Tennessee, and that he lives at 2330 Fort Street and that he knew Victoria Price and Ruby Bates, the girls involved in the case against Haywood Patterson and the other boys at Scottsboro, Alabama, and they roomed near his house for a few months in 1930, and that during the time they were in his neighborhood, they kept company with negro boys and men; he saw them dance with negro boys and men in negro houses; saw them drinking intoxicating liquor with negro boys and men and saw them embracing negro men in dances in negro houses and heard them talk to negro men in the most foul and vulgar language and ask colored men the size of his privates, and stop men and ask them for money and sometimes in Chattanooga, she would make a date with a white man and go fill her date, and then come and ask me to go get her a negro man and she was greatly in love with Shug Moore and I called him for her one time and he is a young negro man, who sells liquor and handles money and she wanted to make dates with him, and I know Asberry Clay, and he is a reliable man and he said Ruby Bates told him she could take five negroes in one night and not hurt her, and from the number of dates she was filling, she was a hot proposition, a common street prostitute of the lowest type, and she did not seem to care for decency or anything. Her general reputation was bad and from it she was not entitled to full faith and credit on her oath in a court of justice.

McKinley Pitts.

> Subscribed and sworn to before me May 2, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Notarial impression seal of J. B. White here attached.)

EXHIBIT "C" TO MOTION FOR NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of Isaac Hinch

Affiant, Isaac Hinch, makes oath that he is 22 years old and resides at 2327 Sidney Street in Chattanooga, Tennessee, and that he was personally acquainted with Ruby Bates and that she visited Chattanooga in 1930, and he had seen her a number of times. On one occasion she came to a dance that was being given at a house of a colored family [fol. 59] and three colored men were with her and they danced a while and they had some liquor and they got in a car and went away and after a while they came back and danced again and then went away again, and finally came back and associated with this colored crowd in and around the house for an hour or two and went off again with these men and I don't know how long she was gone, but later in the night she came back and was drunk and I didn't want the police to arrest her so we called an ambulance and let the ambulance come and get her and take her away.

She had the reputation of being immoral and associated with more colored people than any woman that I ever saw, unless it was a blackheaded girl that run with this Ruby Bates, but I did not know the black-headed girl's name but I did know Ruby Bates.

Her general reputation was bad on the subject of immorality, drunkenness, telling stories, and from her general reputation, she was not entitled to credit of belief on oath in a court of justice. She was an exceedingly low type of woman and spent her time in the main around bootleg joints and places where liquor was being sold and danced and associated in the main with colored people when she was in Chattanooga.

Isaac Hinch.

Subscribed and sworn to before me on this the 2nd day of May, 1931. J. B. White. Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Notarial impression seal of J. B. White attached.)

EXHIBIT "D" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of J. P. Hobby

J. P. Hobby makes oath that he is a citizen of Chattanooga, Tennessee and lives at 1929 Fort Street, which is in the factory district of Chattanooga, Tennessee, and that in the year 1929 and 1930 that he knew Victoria Price and that he saw her in the neighborhood of his house in that section of the city on many occasions, and that in 1929 and more than a year ago, he retailed a little liquid refreshments and that Victoria Price would get liquor and get drunk, and he had a piano at his home and she would dance and put herself on the lowest terms that she could; that she was grossly immoral and danced in a vulgar fashion and she [fol. 60] would dance with colored men and was guilty of the highest order of immorality and her conduct was disgraceful and scandalous and this fact is known to a great many colored people in that section and in that neighborhood.

He also states that he knew Ruby Bates and that she was here in 1930 and that she would get drunk and smoked cigarettes and associated with colored men and would dance in an immodest fashion and was regarded as a very common woman, and it was commonly reported and generally believe- to be true that she spent the nights on many occasions with colored people and colored men at their houses, and this story does not tell hal- of what affiant could tell if it become necessary and if he was given an opportunity to be a witness, but she was just as bad in his opinion as a girl could get to be and keep out of prison.

J. P. Hobby.

Subscribed and sworn to before me on this the 2nd day of May, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, '35. (Notarial impression seal of J. B. White herewith attached.)

EXHIBIT "E" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of Annie Linson

Annie Linson makes oath that she is a citizen of Chattanooga, Tennessee, and personally acquainted with Victoria Price and Ruby Bates, the two girls who made charges against Haywood Patterson, and others, and that she has seen the picture of these girls in the newspapers and she identified the picture attached to the affidavit of Silas Johnson, to be filed in this cause as a picture of Victoria Price and Ruby Bates.

She further states that these two girls lived at various places and rooming houses in Chattanooga in the year 1929 and in 1930, and up until about last Christmas, at various times.

She has seen them one time in her own home when affiant lived on corner of 23rd & Fort Street while affiant had been out in the store to buy groceries for supper, and when she returned home she found Victoria Price and Ruby Bates in her house, sitting in the laps of two negro boys, with one arm around the boy's necks and smoking cigarettes in her house, and this was about two o'clock in the day time [fol. 61] and she made these two girls and the boys all leave her house.

That incident was in 1929. During 1930, she saw them on many occasions, in the neighborhood where she lived, and they would visit the homes of negroes and would dance, with colored men and put their arm around colored men, and smoke cigarettes with them and hug them and carry on with them just like colored girls would do with their own husbands.

These girls Victoria Price and Ruby Bates lived at the home of a Mrs. Luvenia Bennett, a white woman and she made one of them leave her house, and it was reported by Mrs. Luvenia Bennett, that the reason she made the girl leave her house was because this white girl had got a ring from a white man and loaned it to a negro man and the negro man was wearing the ring, or had it and she made the girl go get it from the colored man and give it back to the white man.

She states that in the summer of 1930, during the fishing season, that she saw Victoria Price down on the bank of the river near the brick yard, and she was drunk and she had her shoes and stockings off and had on a dress but no sign of underclothes and she was exposing her nakedness and a white man picked her up and brought her up on the street and turned her loose and she feel down and he told affiant to go and call the police patrol and have the patrol wagon come and get her.

When we left this street she was lying there drunk and two colored men were there with her, but I don't think the police got her that time.

Affiant further states that she has seen these two girls, Price and Bates, in a number of colored people's homes, with men, and one time she saw them in a colored gambling house, where liquor was sold and they were just as familiar with negro boys and men as they could be.

Their reputations were bad; it was bad for lewdness, drunkenness, for going dressed half naked, and dance with negro men and boys and associate with negro men and boys and smoke cigarettes and bet out at all hours of the night and curse and swear, and were a general nuisance to the negro population near where they stayed.

She saw them one time throwing rocks while drunk and fighting with some other white women, where they roomed and the police arrested them.

When affiant saw this Price girl drunk at the fishing place, Dan Bohanan, a negro was there and she told Dan [fol. 62] that if the Price girl did not get sober, for him and the boy with him not to bother her, because I was afraid it might cause trouble, if they had anything to do with her.

They, Victoria Price and Ruby Bates, had a habit or practice of going out on a vacant lot lying between Chestnut Street and the Railroad tracks, which was about 100 yards wide and about six hundred feet long, and they would stay out on this field until late hours at night with men in the dark, as there were no electric lights out on this field, and the men were nearly all negro men with whom they associated.

She further states that these two girls, Victory and Ruby Bates, were women of bad reputations on the subject of truth and veracity; it was bad on the subject of lewdness and vulgarity and bad on the subject of profanity.

Their reputations were bad on the subject of soliciting company among negro boys and negro men; they would hail a negro boy that was a stranger to them and they would ask their intimate friends among colored people to make engagements for them to meet negro men and boys for the purpose of prostitution and lewdness.

I can give the names of a number of people who can tell you all of this and that is not half what I know about them. I am no kin to any of the defendants.

Annie Linson.

Subscribed and sworn to before me April 28, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Impression notarial seal of J. B. White here attached.)

EXHIBIT "F" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of Asberry Clay

Asberry Clay, age 48, married, and residing at 2309 Chestnut Street, Chattanooga, Tennessee, makes oath in due form of law that he is personally acquainted with Victoria Price and Ruby Bates and that he has seen the pictures of these girls attached to the affidavit of Silas Johnson and that he identifies the girls from that picture also.

That he knew them in the year 1929 and 1930 and that where he lives is a colored section, and nearly all the people are negroes, and these two girls were living at the house next door to where he lived and they stayed there about [fol. 63] one month in 1919, and while they were there, their conduct was very bad, in that they associated with colored men, and would curse and swear and smoke cigarettes and they had a custom or habit of going out on a vacant lot about 100 yards wide and about two hundred yards long, and staying out with men until as late as four o'clock the next morning, and this lot is near the railway tracks and near several big foundrys that employ hundreds of negro men and these women were more familiar with negroes than they were with white men.

Affiant states that on five or six or more times he has seen these two girls, Viola Price and Ruby Bates, in negro houses dancing with colored boys and men and seen them have their arms around these negro men in a most intimate manner, and they were frequently meeting this affiant on the street and they would say and said to him, "Give me a dollar" and that was a signal for an engagement, and an offer to meet for the purpose of prostitution and lewdness, and these girls made many visits into the railroad yards and they had a camp or tent where railroad hoboes and people would stop and it was a sort of a camping place and there was a gang or crew of colored men working near there, and the Price girl made this tent, a loafing place in both day and night time, and associated with many colored men in both day time and night time.

It was nothing uncommon or infrequent to see these girls on the sidewalks and street with negro men and they visited a number of places where liquor was sold and made bootleg joints a familiar resort and they would stop negro men or boys on the street and ask for a cigarette, or a match or engage them in conversation and then they would follow up this plan of getting acquainted by going to the shop where the negroes worked and watch for them to come out of the shop at night, and then meet them and go away with them.

Affiant further has seen both of these girls at the Casey & Hedges Foundry and also at the Giles foundry on paydays and numerous negro men would draw their money and would get the money and go outside and hand money in various sums to these two girls.

Affiant further states that he has seen these two girls come out of the houses of colored people before daylight in the morning when the man was going to the shop and he has seen this at several houses where these girls would spend the night with negro men and then leave before day and return to their place of residence. He knows about them staying all night at Sewell's house, a colored man's residence, and a woman whose name he has forgotten but [fol. 64] who has a girl called "Dump" and lived on Chestnut Street near 23rd Street.

He has seen her down at the river drunk on a number of occasions, and he heard about her being naked one night and drunk, but he did not see her naked but she dressed like a woman wearing a bathing suit, too naked to be on the streets, but she was not ashamed.

A-fiant further states that one night in 1930, he saw Victoria Price and three colored men on the field near Chestnut and Twenty-third Street and they had a quart of liquor and he was trying to get some of this liquor and he saw three men have intercourse with Victoria Price on that field that same night, in about one hour's time.

Affiant further states that she has met him and asked him to give her a dollar and her method was to say "Hay—Bo give me a dollar," and that was a signal for an engagement and one time she asked me if I wanted to go up in the field and she said she could stand five men and I told her nothing like that for me.

Affiant was afraid she would get some of these negro men or boys killed, and he was afraid to give her cigarettes. Her reputation was bad for lewdness and prostitution; bad on the subject of truth and veracity and she was unworthy of belief on her oath in a court of justice, from her reputation.

Affiant knew her character was bad, immoral and lewd, and her associations were largely with negroes, and it was currently reported as a part of her reputation that a white man asked her for a date one day and she said No, that "This is negro night," it was pay day at the shop and she wanted to meet the negroes at the shop.

She was a notorious prostitute in the neighborhood and her associations were with the lowest class of negroes in Chattanooga, Tennessee. Affiant saw them with Tom Landress in his house in Chattanooga, arms around him hugging him and embracing him both in day and night time. He had every chance to have intercourse with them but I never saw him in bed with either of them.

Asberry Clay.

Subscribed and sworn to before me April 29, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Notarial impression seal of J. B. White attached.)

[fol. 65] EXHIBIT "G" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA v. HAYWOOD PATTERSON

Affidavit of Savannah Clay

Savannah Clay makes oath that she is the wife of Asberry Clay, who has this day given his affidavit in this case, and that she has seen the photographs of Victoria Price and Ruby Bates and that she has known these girls for about two years.

She further states that she has seen these girls in company with colored men on 23rd and Chestnut Street and in that neighborhood on many occasions, and the people everybody around there give them bad names and the people say they are immoral women.

She has seen them on the field near the railroad track on many occasions and they would be there late at night and they were in Landress' house lots of nights and would be coming out late at night.

This field alongside the railway track is a place where immoral men and women meet and frequent, and is in a negro section of Chattanooga in the factory district and not much police interference down in that section.

Their reputations were bad for lewdness, and their reputations were that they visited bootlegging joints and bawdy houses, and houses of ill-fame and were bad as prostitutes and unworthy of belief on their oaths in a court of justice.

My husband told me about one of these girls asking him for cigarettes and stopping him on the street.

I saw them on the street on many occasions with negro men and negro boys.

Savannah Clay.

Subscribed and sworn to before me April 29, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Notarial impression seal attached here.)

EXHIBIT "H" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of Willie Douglas

Willie Douglas makes oath that she is a citizen of Chattanooga and her brother William Dougles and Laura Douglas, her mother, live in Huntsville, Alabama, and she [fol. 66] is personally acquainted with Victoria Price and Ruby Bates, and that on Monday before the trouble on the train Wednesday, in March, 1931, that she was with Victoria Price and Ruby Bates, and she met them on the railway tract near 19th Street in Chattanooga, and she had known them when they stayed at Mrs. Luvenia Bennett's house and a colored man named "Shug" Moore used to go with Victoria Price and he is a negro man.

Affiant further states that on Monday in March 23, 1931, that these girls went down on the river at Frank Quann's place, trying to buy liquor but did not have the money and could not get the liquor.

In 1930 these girls were running with and visiting colored men and boys and associating with them and they often told me that they went home with negro men and stayed with them all night lots of times and they were with colored men here on Monday before this trouble occurred on Wednesday, March 25, 1931, and it is a fact that these parties were trying to get liquor on the Tennessee River and when we did not get it I left these two girls with Roosevelt Conn and Jim Cunningham, two colored men.

Willie Douglas.

Subscribed and sworn to before me April 29, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Notarial impression seal of J. B. White attached.)

EXHIBIT "I" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affidavit of Tom Landers

Tom Landers makes oath that he is a citizen of Chattanooga, Tennessee, and that he knows Victoria Price, the girl who was the prosecuting witness against Haywood Patterson and others in the case, now called the Scottsboro cases, charging Haywood Patterson with the crime of rape.

That in the year 1929, he knew where Victoria Price stayed in Chattanooga on Chestnut Street for a while and that he saw her in numerous bawdy houses and bootlegging houses and she would talk to colored men about prostitution and lewdness and he has seen her on the corner of Chestnut and Twenty-third street lots of times, both in day [fol. 67] time and in the night time, always in company with colored people.

I heard about her taking a white man's ring and giving it to a negro man and the lady where she roomed made her go get the ring from the negro man and take it back to the white man, and this is a part of her general reputation.

It is a fact that she has asked me for matches and cigarettes and that she gets drunk and she did not wear any clothes hardly and dressed in a lewd and almost nude fashion, and I saw her drunk and in a fight with another woman one night and she had her clothes up around her body and she had on only two garments, and exposed her private parts and it was a drunken, disgraceful spectacle in the presence of a number of colored people. There was no police officers in that section of the city and they were not arrested as far as I know. Her general reputation was bad, and from her general reputation she is not entitled to full faith and credit on her oath in a court of justice.

Tom Landers.

Subscribed and sworn to before me May 1, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, 1935. (Notarial impression seal here attached.)

EXHIBIT "J" TO MOTION FOR A NEW TRIAL, CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

Affiant Silas Johnson makes oath that he is 56 years of age and lives in Chattanooga, Tennessee, and that he lives in what is known as the factory district where a great many colored people are employed. At the U. S. Cast Iron Pipe & Foundry Company, they usually employ about 1000 colored men and at Crane & Company about 2000 men; at Walsh Weidner and Hedges about 2000; Ross-Meehan Foundry Company, 200 or 300 men; the Chattanooga Blow Company, 200 or 300; the Vesta Gas Range Company, 100 or 200, and at the Brick Yard and Tannery and the Sewer Pipe Works several hundred more.

That he is acquainted with Victoria Price and Ruby Bates, the alleged girl victims that were involved in the trial of nine negro boys at Scottsboro, Alabama. That he [fol. 68] attaches hereto a photograph of these two girls taken from a newspaper which he identifies as being the two girls that were in Chattanooga in the latter part of the year 1929, and in the early part of the year 1930 and girls that he had seen on many occasions.

That he had seen Victoria Price and Ruby Bates drunk on many occasions and that they visited and procured their whiskey in the houses of colored people and were often in colored houses at night and that on the edge of the City of Chattanooga near the river, is a place where garbage is dumped and destroyed and is called the city dump and at and near this dump there are various persons who sell intoxicating liquor, and on many occasions he has seen these two girls under the influence of liquor near the city dump on the bank of the Tennessee River.

He further states that on many occasions he has met them on the streets and they would call him pet names or try to engage him in conversation, and that he refused to have any talk with them or to pay them any attention because he felt that it was improper and calculated to get him in trouble and he has told them on many occasions not to speak to him or call him pet names or try to become familiar with him, and notwithstanding the fact that he has in this way tried to avoid them on many occasions, they have tried to stop him and engage him in conversation on the streets and other places and to engage him in conversation in daytime and night time.

He further states that he has seen them in houses of colored people in Chattanooga on many occasions and that they visited the house of a man called Buddy and whose wife is named Lillian and that at or near the foot of Lookout Mountain there was a little shack of a building which might be termed a tent and that these girls stayed in this house on a number of nights, and the neighborhood surrounding the place where these girls were spending their time was a colored section of Chattanooga and that they were familiar and unduly familiar with many colored men and boys in Chattanooga.

He further states that he is acquainted with the reputations of both of these girls in Chattanooga where they lived for sever-l months and that their reputation on the subject of virtue was bad and that their reputation on the subject of decency was bad, and their reputation on the subject of truth and veracity were bad and that they were regarded as immoral women and unworthy of belief on oath in a court of justice.

He repeats that he is personally acquainted with their general reputation in Chattanooga and that that general reputation is bad, and that from their general reputation they are not entitled to full faith and credit on their oath in a court of justice.

[fol. 69] He files and attaches to his affidavit the picture of these two girls as exhibits to this affidavit.

Silas Johnson.

Subscribed and sworn to before me on this the 29th day of April, 1931. J. B. White, Notary Public, Hamilton County, Tenn. My commission expires Jan. 29, '35. (Notarial impression seal attached.)

[fol. 70] EXHIBIT "—" TO MOTION FOR A NEW TRIAL IN CASE OF STATE OF ALABAMA VS. HAYWOOD PATTERSON

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION, 1931

No. 2404

STATE OF ALABAMA

vs.

CHARLIE WEEMS and CLARENCE NORRIS, alias CLARENCE MORRIS

Appearances:

H. G. Bailey and Proctor & Snodgrass, Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins, Judge presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson et al., what says the State?

Mr. Bailey: We are ready if the Court please.

Mr. Roddy: If the Court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint, but, I would not appoint counsel if you are appearing for them, that is the only thing I am interested in—I want to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case, I would like to appear along with counsel your Honor appoints.

The Court: You don't appear if I appoint counsel.

Mr. Roddy: I could not like for your Honor to rule me out of it——

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to [fol. 71] appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and ther of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you all willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your *your* Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants, I don't want to impose on you all, but if you felt like counsel from Chattanooga——nooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet, of course if your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case, they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel, I don't see the necessity of the Court appointing anybody; if they haven't counsel, of course I think it is up to the Court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed, it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of the people who are inter- [fol. 72] ested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it I would be glad to turn it over — a counsel but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation for it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it, I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy, I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the Court and not to the defendants, I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath. That is what I was trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel. If he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it, I am interested to that extent.

The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of the bar to represent them, I expect that is right. If Mr. Roddy, will appear, I wouldn't of course, I wound not appoint anybody. I don't see Mr. Roddy how I can make a qualified appointment or a limited appointment, of course I don't mean to cutt off your assistance in any way—well, gentlemen I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it under the circumstances.

[fol. 73] The Court: All right, all the lawyers that will, of course, I would not *not* appear a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar, I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment, I met Mr. Roddy and had a talk with him and I gathered from Mr. Roddy that he would be employed in the case and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case and I recognize the principle involved and the fact that I took it for granted that Mr. Roddy would be here as employed counsel and I was approached then to know if I was in a position to accept employment on the other side of the prosecution, and I thought under the circumstances I was. I am not trying to shirk my duty, and I know my duty is whatever the Court says about these matters but I did accept employment on the side of the State and have conferred with the Solicitor with reference to matters pertaining to the trial of the case and I think it is due the

Court, I was not trying to shirk any duty whatever and I want the Court to understand my attitude in the matter, I am ready to obey any order of the Court.

The Court: Of course that is a matter with counsel, I know nothing about those affairs.

Mr. Proctor: I wanted the Court to understand why it was I agreed to become assisted with counsel for the State, thinking they had counsel, I accepted employment on this side, thinking of course they had counsel and I would be relieved from that duty, and I have been conferring with the deputy solicitor about matters pertaining to the trial. I am ready to do whatever the Court thinks is the proper thing to do.

The Court: I will leave that with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear, with their assurance that they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

[fol. 74] Mr. Roddy: Your Honor, please, we have a petition we wish to present at this time for a change of venue—shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I just have one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the Court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition, on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have seasonable notice of it. A week has passed since the date of arriagnment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think in the first place comes too late.

The Court: I would not require you of course—I will give you time to answer it.

Mr. Bailey: That is the first ground. If your Honor permits the filing of it, I move to strike it because it is nothing except conclusions, there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibits is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no po-tion concerning that newspaper article, no affidavity attached and not witness in support of this. Now, we first object to the filing and the consideration of it. Your H-nor permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time Solicitor, I know the circumstances some time but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion; the proof even of a newspaper article alone is not sufficient, there is no affidavit attached in support of it. Now, your Honor might permit me to offer testimony on it but we move to strike [fol. 75] it and to demur to it.

Mr. Roddy: Your Honor, I might suggest that the petition does not only base conclusions but it tells facts about troops being here, and your Honor please we offer the Sheriff at this time to show the reason for it and why. The matters set out in the petition itself.

The Court: Well, do you want time to answer it—have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff if the Court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes sir.

M. L. WANN examined as witness on defendant's petition.

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this County?

A. Yes sir.

Q. Did you deem it necessary to call out a unit of the National Guard to bring these defendants to court to trial?

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I see any guns there or anything like that and I did not hear any threats but——

Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court.

Mr. Wann: Today?

Q. Yes, sir.

A. Yes, sir I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As Sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir, I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here but people all over the county.

Q. You deemed it necessary not only to have the pro- [fol. 76] tection of the Sheriff's force but the National Guard?

A. Yes sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination:

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse have you?

A. No sir.

Q. Is it your idea as sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. Not any higher here than in any adjoining counties.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the population of this county if they could have a fair and impartial trial in this case in Jackson County.

A. I think they can.

Q. Is that your judgment?

A. Yes sir.

Q. You have heard nothing of any threats or any thing in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?
[fol. 77] A. Yes sir.

Mr. Proctor: That is all.

Redirect examination:

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the courthouse?

A. Yes sir.

Q. And there is a great throng around the courthouse right now that would come in if you did not have the troops?

A. Yes sir, they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them, there are several from Madison and Marshall and De Kalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No sir, that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir, I thought it was my duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

Q. You have five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Moody: I might ask Major Starnes.

Major Joe Starnes, witness for Defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

[fol. 78] Q. How many men have you here protecting these defendants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9 P. M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

Q. Now your units of the National Guard have protected these men and have been with them on every appearance they have made in this court house?

A. That is correct.

Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes sir.

Q. After these men were arrested when did you first bring them back?

[fol. 79] A. On Tuesday of the past week is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them to Gadsden?

A. That is right.

Q. Then when did you bring them back?

A. Brought them back and arrived here at 5:15 this morning.

Q. You have had them here twice from Gadsden?

A. That is right.

Q. You bring them here and then carry them back?

A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here, of course, under orders from the Governor?

A. Yes, sir.

Q. And you have been here under his orders ever since?

A. That is correct.

Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro, in Jackson County, and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants.

A. I have not.

Q. From your knowledge of the situation, gained from these trips over here, I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

A. I think so.

Q. Have you seen any demonstration, or attempted demonstration, toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hos- [fol. 80] tile demonstration.

Q. Your judgment that crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all, Your Honor.

The Court: Anything further for the State?

Mr. Bailey: No, sir, we don't care to offer anything further. Now, was our objection to the newspaper articles noted.

The Court: Well, the motion is overruled, gentlemen.

Mr. Roddy: We want to except to Your Honor's ruling.

The Court: Yes, I will give you an exception. Let the motion be filed Mr. Clerk—I will give you an exception to it Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called; we have some we are not sure about.

The Court: Call the State's witnesses, Mr. Clerk.

(Witnesses called by the Clerk for the State.)

Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages to the court.

The Court: We will see about it when we get to it. What says the State?

Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first, Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, sir, we don't demand a severance.

The Court: No severance is demanded? Now, do you want to try them all?

Mr. Bailey: The state demands a severance, and we will try under the first joint indictment, Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the court please, I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

[fol. 81] Mr. Bailey: Roy Wright is, yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: This is a matter with the court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

The Court: I understand, but I don't want to take that up now. I want to proceed with the others.

Mr. Bailey: As long as this age is not presented to the court we want to proceed.

Mr. Roddy: Before these boys are placed on trial, we would like for your Honor *ot* pass on that.

The Court: I will pass on that but we can do that possibly some night when we are not engaged up here with the jury, of course that is a matter if it is raised it comes up to be passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call our witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Rody: Yes, sir.

The Court: I expect it would not be right to attach Mr. Amos; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

The Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

[fol. 82] Mr. Thompson: Mr. Riddick and Water Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for these witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect every one of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here and if your Honor will grant me a few minutes time I might simplify these matters, I want to be of all the help I can with the Court and very one concerned but there are some very material facts in the case, I have no motive in this world in appearing down here except to get the absolute truth about this matter and if your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know your Honor please about our witnesses?

The Court: What about the witnesses Mr. Sheriff—all right gentlemen, if we don't get the witnesses here I will allow you a showing for them, is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject of course to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the Court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under the rule, except as to the other defendants not on trial excused from the rule by the Court.

[fol. 83] Affidavit of T. W. Killough

STATE OF TENNESSEE,
County of Hamilton, ss:

I, T. W. Killough, Clerk of the County of Hamilton, State of Tennessee, (and a Court of Record of the aforesaid County, having by law a seal) do hereby certify that J. B. White Esquire, whose name is subscribed to the attached certificate of acknowledgement, proof, or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public, duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgement of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached certificate in his genuine signature.

In witness whereof I have hereunto set my hand and affixed my official seal this 2nd day of May, 1931.

T. W. Killough, Clerk, by Margaret Orell, D. C.
(Impression seal "Hamilton County Court seal, Tennessee", here attached.)

Affidavit of Judge Cummings

County Court Room

STATE OF TENNESSEE,
Hamilton County:

Chattanooga, Tenn., May 2, 1931.

I, Will Cummings, sole and presiding Judge of the County Court of said County, certify that T. W. Killough, who gave the foregoing certificate, is now and was at the time of signing the same, Clerk of said Court, and that said Court is a Court of Record, and that his attestation is in due form, and his official acts, as such, are entitled to full faith and credit.

Witness my hand this 2nd day of May 1931.

Will Cummings, Judge. (Seal "Hamilton County Court seal, Tennessee," herewith attached.)

[fol. 84] STATE OF TENNESSEE,
Hamilton County:

I, T. W. Killough, Clerk of the County Court of said County, certify that Hon. Will Cummings, whose genuine official signature appears to the above and hereto annexed certificate, is, and was at the time of signing the same, sole and presiding Judge of the County Court in and for the County and State aforesaid, duly commissioned and qualified, and that all his official acts, as such, are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at this office, in the City of Chattanooga, this 2nd day of May, 1931.

T. W. Killough, Clerk, by Margaret Orrell, D. C. (Seal "Hamilton County Court seal, Tennessee," here attached.)

[File endorsement omitted.]

EXHIBIT TO AMENDED MOTION FOR A NEW TRIAL—SECTION 12 ABOVE

IN CIRCUIT COURT OF JACKSON COUNTY, ALABAMA, SPECIAL SESSION, 1931

No. 2402

STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

Appearances:

H. G. Bailey and Proctor & Snodgrass, Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury, when the following proceedings were had and done, to-wit:

The Court: All right, the first case Solicitor is the case of State vs. Haywood Patterson, et als., what says the State?

[fol. 85] Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants but people who are interested in them have spoken to me about it and as Your Honor knows I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is, whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them that is the only thing I am interested in—I would like to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel.

Mr. Roddy: I would not like for Your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you all willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

[fol. 86] Mr. Moody: I see his situation of course and I have not run out of anything yet, of course if Your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case, they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the court appointing anybody, if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me come down here and pay counsel. If they should do it I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it, I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

[fol. 87] Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it, I am interested to that extent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them. I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or limited appointment;

of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I could not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar, I will go ahead and help do anything I can do.

The Court: All right.

On the 6th day of May, 1931, the defendants, separately and severally, filed in said cause a petition, which said petition is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et al., Defendants

[fol. 88] PETITION OF CLAUDE PATTERSON ET AL.

To the Honorable E. A. Hawkins, Judge of the Circuit Court of Jackson County, Ala.:

The petitioners, Claude Patterson, Ada Wright, and Mamie Williams most respectfully show unto the court that Claude Patterson is the father of Haywood Patterson, and that Ada Wright is the mother of Roy Wright and Andy Wright, and that Mamie Williams is the mother of Eugene Williams and that these petitioners employed George W. Chamlee, attorney-at-law, of Chattanooga, Tennessee, to represent their boys in the case of the State of Alabama vs. Haywood Patterson et al., pending in the Circuit Court of Jackson County, Alabama, and which they desire to be appealed from that court to the Supreme Court of the State of Alabama, in the event a new trial is not granted Haywood Patterson, and if a new trial is granted for him, the petitioners, Ada Wright and Mamie Williams desire that the case against their boys be appealed to the Supreme Court of the State of Alabama.

Claude Patterson shows unto the court that George W. Chamlee had been his attorney in legal matters several years ago and recently in the early part of 1931, Claude Patterson employed Mr. Chamlee, as his attorney to defend a case against his son, Julian Patterson of Chattanooga, Tennessee, and that they had made a contract with Mr. Chamlee to represent their boys in these cases at Scottsboro, Alabama, and also on appeal from the case at Scottsboro, Alabama, and that they had not employed any other attorney and they had not authorized any other attorney to represent them, or to bind them in the premises.

They further show unto the court that since their boys have been arrested that they had only had one opportunity of visiting their boys and that was in the City of Birmingham, Alabama, and that their boys told them that they had signed a request in the form of a contract asking Mr. Chamlee to represent all of them on appeal in their cases, and that all of the defendants in Birmingham jaul stated to these petitioners that they had likewise signed such a contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to make any reasonable investigation of the cases, and the defendants were all in company with each other in their joint cells in jail and no opportunity to write or take notes of what each one had to say about his case and no opportunity for a private conversation whatsoever with the defendants.

Petitioners carried their attorneys with them and was informed that if their attorney had not been with them that they could not have seen their boys and that they would soon be removed from Birmingham to Kilby prison at or [fol. 89] near Montgomery, Ala. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Ala., and on April 29th, 1931 their attorney communicated with the Warden of Kilby Prison and was informed that no one could see the defendants except upon written order of this Honorable Court and for them not to come to Montgomery, Alabama, with the expectation of seeing them without an order from this Honorable Court.

Petitioners are advised that important evidence, touching the merits of the cases of these defendants, has been discovered since the trial and that in order for newly discovered evidence to be presented under the laws of the State of Alabama, that the defendant must make an affidavit or show a good cause why he did not have the evidence on the regular trial and give a meritorious reason for not producing it when he was tried before it would be available on the hearing of the motion for a new trial.

Petitioners further show unto the court that the defendants were arrested on the 25th day of March, 1931, and were indicted in the last days of March, 1931, and the first days of April, 1931, and were put on trial about the 6th, 7th, and 8th and 9th of April, 1931, and that these petitioners were not permitted to see them prior to the time of the trial and they have only seen them one time since the trial. They are advised that under the laws of the State of Alabama that the parents of children under twenty one years of age, when in company with responsible and reputable counsel, have a lawful right to a conversation with their children separately and apart from other persons, one at a time, for the purpose of preparing the cases for trial.

These petitioners have not read the transcripts of the records in these cases and do not know the merits of the testimony introduced on the trial, but have been informed that there was some antagonistic interest involved between certain of the defendants and that separate trials ought to have been had by some of them in order to avoid conflicting interest prejudicing the case or cases against others.

These petitioners are all colored people and they were afraid to visit Scottsboro at the time of the trial and are afraid to visit Scottsboro now, and if the defendant, Haywood Patterson, has to be brought to court when the motion for a new trial is heard, they would petition that the hearing be had at Montgomery, Alabama, or at Kilby Prison so that no risk of violence would be assumed and that they might attend the hearing in person when the motion for a new trial was heard.

Petitioners further show and represent that they are advised, that in view of new facts and newly discovered evidence, that has been learned of since the trial, that the [fol. 90] hearing of a motion for a new trial ought to be continued from May 6, 1931, until some later date, in order to prepare the motion for a new trial to be presented to Your Honor.

Petitioners especially appeal to this Honorable Court to afford them and to their counsel every reasonable opportunity to present such evidence as they may have, or may obtain on the hearing of the motion for a new trial and to afford them an opportunity of presenting additional affidavits from witnesses of whom they have heard, and which said witnesses one of whom is reported to be at Paint Rock claims that when Victoria Price first got off the train, she was asked if any of the defendants had done anything to her, and that she said they had not.

Affiants desire to file this petition as parents and next friend of their children, and especially does Claude Patterson desire to file it on behalf of Haywood Patterson, whose motion for a new trial has been set for hearing May 6, 1931, and that as Haywood Patterson is in Kilby Prison and as the keeper of that prison has informed G. W. Chamlee, attorney, that he could only see Haywood Patterson upon a written order from the Judge of the Circuit Court of Jackson County, that this affiant desires to file that affidavit, to be considered on the motion as a reason why the affidavit of Haywood Patterson is not filed herein.

Affiant Claude Patterson, further makes oath that Haywood Patterson told him that threats were made against him when he was arrested to lynch him, and that all of the defendants were scared, and if it had not been for the military company coming he believes that all of them would have been killed.

Affiant further stated that Haywood Patterson told him that when the jury reported in the case against Weems and Norris, and gave them a verdict of death, that the people in the Court house clapped their hands and some of them hollowed, and a few people left the court house and went outside and in a minute or two the crowd outside commenced hollowing and that there was great demonstration out in the streets of Scottsboro.

Affiant further states that he was afraid to go to Scottsboro and was afraid to go to Gadsden, and that he was utter helpless, *and at* before the trial, as far as rendering any assistance to his boy was concerned or getting him any witnesses.

Ada Wright and Mamie Williams join in this affidavit, and say their boys told them about the demonstration in the court house when Norris and Weems were convicted, and about the threats against their lives.

[fol. 91] Affiants further state that they are advised that there are a number of witnesses who saw the train leave Chattanooga and going by Lookout Mountain where it had to go through a tunnel and that there was about twenty or twenty-five negroes on the train besides the white girls and boys, and that they are advised that the trouble on the train was provoked by the white boys and that after the alleged fight that about ten negro boys got off the train between the time of the alleged fight and the reaching of the station at Paint Rock, and that these parties are evading giving any information about it because they are afraid of the consequences of such disclosures.

Affiants further state that they have talked to a number of people in Chattanooga who claim to know Victoria Price and Ruby Bates and who say that they were women of bad character and reputation and unworthy of belief on their oaths in a court of justice.

They will file with this petition such affidavits as they can get and they hereby make application to this Honorable Court for permission to file other affidavits, including affidavits of the defendants, in support of the motion for a new trial in the case against Haywood Patterson and such other evidence as they may be able to obtain material thereto.

The premises considered, the petitioners pray that this Honorable Court will make an order addressed to the Warden of the State Prison of the State of Alabama at Kilby Prison at Montgomery, Alabama, directing or permitting that counsel for Haywood Patterson et al. be permitted to confer with them in private so as to prepare their legal evidence in the motion for a new trial of Haywood Patterson, and for the appeal of the cases against the other defendants who have been tried.

II

That an order be made authorizing the Warden of Kilby Prison to permit the parents and relatives of the defendants to see the defendants in the presence of the Deputy Warden, or guards, such as may be provided by the rules of the prison, so that the petitioners will not be denied the right to visit their children while they are confined in Kilby Prison awaiting the execution of the death sentence.

III

That the hearing of the motion for a new trial of Haywood Patterson set for May 6th, 1931, at Scottsboro, Alabama, be continued for thirty days, or for some reasonable time, and that it be heard at Montgomery, Alabama, or if [fol. 92] the defendant is not required to be present at the hearing, that he be granted time to file additional affidavits while the State is making its reply to such as he has filed.

(Signed) G. W. Chamlee, Attorneys.

Duly sworn to by Claude Patterson et al. Jurat omitted in printing.

[File endorsement omitted.]

On the 19th day of May, 1931, the defendants filed in said cause and spread upon the motion dockets of said court, a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

Second Amended Motion for New Trial

Comes the defendant, Haywood Patterson, in the above styled cause of the State of Alabama v. Haywood Patterson, and moves the court to set aside the verdict and judgment rendered in this case No. 2402 against him on the 7th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant him a new trial and he assigns the following reason and causes separately and severally, to-wit:

I

[fol. 93] The indictment on which the defendant was tried was void and illegal; (a) In that it was vague, indefinite and uncertain; (b) in that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the defendant; (c) in that it failed properly to appraise and inform the defendant of the exact nature, basis and grounds of the charge against him and which he was called upon to meet; (d) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment the defendant could not properly and adequately prepare to meet and defend himself at the trial: (e) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment the defendant has become and is subject for the same offense to be twice put in jeopardy of life or limb in violation of said defendant's rights under the Constitution of the United States, amendment 5, which provides: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb" and the rights under the constitution of the State of Alabama, Article 1, Section 6; (f) in that the said indictment by reason of its vagueness indefiniteness and uncertainty was a denial of the defendant's rights under the Constitution of the United States, amendment 14, Section 1 which provides "—no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws", and under the constitution of the State of Alabama, Article 1, Section 6 which provides; "That in all criminal prosecutions, the accused—shall not be deprived of life, liberty, or property, except by due process of law." For these reasons the judgment ought to be arrested and a new trial granted.

II

The defendant on trial for his life was entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influences and communications which might tend to disturb or distract their minds free a free impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in advance of the trial [fol. 94] that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which a jury was to be chosen, the jury's minds would be or become influenced against the defendant by the prevailing sentiment and feeling of hostility in said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendant of his right under the Constitution of the United States, Amendment 14, Section 1, and the constitution of the State of Alabama, Article 1, section 6, and was an abuse of judicial discretion and constituted reversible error. A new trial should therefore be granted.

III

A new trial should be granted in that the rights of the defendant under the Constitution of the United States, Amendment 14, Section 1, and under the Constitution of the State of Alabama, Article 1, Sec. 6, were violated for the following reasons: (a) Defendant, while under arrest, was not afforded nor did he have an opportunity to employ counsel to aid and advise him; (b) he had no opportunity to employ an attorney to represent him; (c) he had no opportunity or sufficient time in the 12-day period between his arrest and trial to prepare properly for the trial on the outcome of which his life and liberty depended; (d) he was in prison in a jail situated in a city far away from his home, where his parents and kinsfolk resided and he had no opportunity to communicate with them, his parents and kinsfolk, who, when they finally learned of his plight, dared not visit him for frear of personal violence from a hostile and excited populace; (e) due to race feeling and prejudice which prevailed in the county where the trial was held, he could not have and was denied a fair and impartial trial before an unbiased and unprejudiced jury; (f) immature in years and lacking the advantages of an education, he was too ignorant and did not know how to prepare for trial or how to obtain the attendance of his witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and he was entirely unacquainted and ignorant of the rules and principles of law; (g) repeatedly threatened, intimidated and put in fear of death, he neither knew how nor could communicate with his father and mother to employ an attorney in his case and to advise him about his rights until the very day when the case was called for trial; (h) while the trial was on, the jury in his case was asked by the court to withdraw to an adjoining room, and the jury in another case, [fol. 95] to wit: State of Alabama vs. Weems and Norris, entered the court room and announced that they found the said defendants, Weems and Norris, guilty, and recommended the penalty of death to the sound of great applause, stamping of feet and jubilant shoutings from the spectators which crowded the court room and from those who filled the environs of the court house, all of which the jury hearing the evidence in the trial of this defendant could not but have heard, to the irreparable hurt of this defendant then on trial for his life; (i) continuously and throughout the trial, a crowd of people dominated by prejudice and hostility towards this defendant filled up the court room and by bearing and dem-anor influenced the jury adversely to the defendant; (j) that while this defendant was on trial, a crowd of people to the number of about ten thousand gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court house and enacted demonstrations hostile to the defendant, and also a violent demonstration outside the court house greeted the announcement of the conviction of Weems and Norris, of all of which the jury could not but have known; (k) that the defendant was tried in a county where mob hostility towards him raged with such violence that the Sheriff of said county and the Governor of the State of Alabama deemed it necessary to call out a military force to protect this defendant against a threatened lynching by the mob which assembled around the jail where he was held, and to guard him on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendant and to guard him after the trial back to jail; all to prevent the threatened efforts repeatedly made to lynch the defendant from being carried out; (l) that the trial of the defendant, who, with either other negro boys, was charged with the crime of rape, alleged to have been committed against two white women, was conducted under stress of great excitement, mob hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of this county and adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which published in advance of and during the tiral of the defendant the supposed details of the defendants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to [fol. 96] vicious and degrading lynch sentiment which they roused in and fed to the people of this country and adjacent counties, thereby making it impossible for this defendant, as well as the other defendants, to have the benefits of a fair and impartial trial, and rendering the verdict of the jury and the judgment entered thereon illegal and void; and for these reasons a new trial should be granted.

IV

A new trial should be granted in that while the trial of this defendant was on, the jury hearing evidence in his case was asked by the court to withdraw to an adjoining room within thirty feet, more or less, of the court room, and the jury in the case of State of Alabama vs. Weems and Norris entered the court room and announced that they found these defendants guilty of the crime of rape and recommended the penalty of death. Thereupon the spectators of the court room made a demonstration and with clapping of hands, stamping of feet, and noisy shouting manifested their approval of said verdict. At that time, the jury hearing evidence in the case of this defendant was in an adjoining room distant about thirty feet from the court room. In that adjoining room a transom opened to the court room, thereby allowing the jury in the case of this defendant to hear everything which transpired in the court room. Outside the court room, the crowd which filled the environs of the courthouse joined in a shouting chorus which swelled and reached out into the furthest ends of Scottsboro and in the business sections thereof, and the band of music struck up with a noisy vigor in manifestation of their approval of the verdict of the jury in the case of State of Alabama vs. Weems and Norris. This, too, the jury in the case of this defendant heard. This demonstration was calculated to and did prejudice the minds of the jurors who were trying this defendant, and was also calculated and did prejudice the minds of the jurors who soon thereafter were to try the five remaining defendants and made it impossible for any of the defendants to obtain an unprejudiced, impartial and unbiased jury in the trials of their cases. The failure of the court to declare a mistrial in the case of this defendant, upon the happening of the foregoing ser*ious* of incidents, was reversible error and a new trial should therefore be granted.

V

The court further erred in failing to continue the case of this defendant on his own motion when the jury in the case of State of Alabama vs. Weems and Norris reported its verdict and the demonstration in the court room ensued.

[fol. 97]

VI

The court's refusal to grant the defendant a special jury or a special venire or jurors upon the demand therefor by defendant's counsel when from the special venire already summoned a jury had been drawn to try Weems and Norris and which special venire was therefore familiar with the testimony concerning the crime alleged to have been committed by defendant, and further, when it was evident that the defendant could not have a fair and impartial trial by a jury selected from among the inhabitants of the county where the trial was held and at a time when the sheriff of the county and the Governor of the State of Alabama deemed it necessary to call in a military force to guard and protect the defendant against threatened mob violence and lynching, and to guard the courthouse, was a denial to this defendant of his rights under the Constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was in contravention and violation of the jury law of the State of Alabama as is provided by the Statutes of Alabama.

VII

The court erred in not questioning and in failure to qualify the trial jurors as to race prejudice and as to whether or not they could and would, in view of the fact that the defendant was a negro, and the complainant and prosecuting witness a white woman, give the defendant a fair, impartial and unprejudiced trial, and the court further erred in failing to call this fact to the attention of the jurors;

and if it had appeared that any juror entertained a prejudice in regard to negroes or that any juror could not or would not, in view of the fact that the defendant was a negro and the complainant and prosecuting witness a white, give the defendant a fair, impartial and unprejudiced trial, such juror should have been disqualified and discharged from jury duty. The failure of the Court in this respect was a denial of the defendant's rights under the Constitution of the United States, Amendment 14, Section 1. For this reason a new trial should be granted.

VIII

The exclusion of negroes from the list of jurors from which the defendant's jury was drawn was a denial of the defendant's rights under the Constitution of the United States, Amendment 14, Section 1, and a new trial should be granted.

[fol. 98] IX

The court erred in that it permitted the jurors to remain in the court room during the preliminary argument and discussion of the case between the court and a group of attorneys appointed by the court to represent the defendants. This argument and discussion between the court and counsel was calculated to and did prejudice the minds of the jurors. A new trial should therefore be granted.

X

A new trial should be granted in that public sentiment and feeling against the defendants and the crime charged and the language of the newspaper which published the same throughout the northern part of the State of Alabama and in the State of Tennessee and Georgia were of such a character that the defendant- could not get a fair, impartial and unbiased jury.

XI

The verdict of the jury and judgment entered thereon are supported by no competent or sufficient legal evidence that they are against the weight of evidence and against the law, and that all the credible evidence preponderates against the verdict of the jury and that the evidence adduced at the trial failed to establish the guilt of this defendant beyond a reasonable doubt; for these reasons a new trial should be granted.

XII

A new trial should be granted because of evidence which has been discovered since the trial of the case tending to prove that the defendant is innocent of the charge made against him, and which said evidence the defendant did not and could not know and discover before the trial. Said newly discovered evidence will be properly presented to the court on the day of the argument of this motion for a new trial.

XIII

The court erred in refusing to permit defendant's counsel to interrogate the prosecuting witness, Victoria Price, touching her character and reputation as a common prostitute, and the court's refusal to allow such evidence and the interrogation of the prosecuting witness thereon was reversible error, for which a new trial should be granted.

XIV

The court committed error in refusing to permit defendant's counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a venereal disease. A new trial should therefore be granted.

XV

The court further erred in permitting the prosecuting attorney to put leading questions on direct examination to the State's witnesses and for this reason a new trial should be granted.

XVI

A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendant, although he knew of the severity with which the crime of rape is punished and the swiftness with which such punishment is visited in the south, remained on the train and made no effort to flee, a circumstance which, together with his conduct on the day of his arrest, supports the inference of defendant's innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XVII

A new trial should be granted in that the State, although it had in its control a number of white boys who were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who, the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witnesses to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witnesses and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the State offer any reason for not producing these witnesses. The State's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that these boys, and especially Gilley, [fol. 100] in the control of the State, were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefited the prosecution but would have benefited the defendant, and moreover, would have exonerated the defendant.

XVIII

A new trial should be granted in that the proof in the record of the trial establishes the following: that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen Negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time that this train reached Paint Rock, Alabama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however, conceding, that all this trouble occurred while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the Negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

(Signed) G. W. Chamlee, Atty. for Deft., Haywood Patterson.

[File endorsement omitted.]

Thereupon, on the 19th day of May, 1931, the defendant filed in said cause, in support of his said motion for a new trial, the joint affidavit of Haywood Patterson, Clarence Norris, Charlie Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams, which said affidavit is in words and figures as follows, to-wit:

[fol. 101] IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402 and 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery, Eugene Williams

AFFIDAVIT OF HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE ROBERTSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAMS

The undersigned affiants make oath in due form of law that they were defendants in the above styled cause, tried at the special session of the Circuit Court of Jackson County in April, 1931, at Scottsboro, Alabama.

Affiants further state that when the court was organized and their cases called for trial, that they did not know who would be their counsel and that they had been in jail ever since they were arrested, March 25, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinfolks or friends and had no chance to procure witnesses and no opportunity to make bond or to communicate with friends on the outside of the jail.

They further show that there was a discussion between the trial judge and Mr. S. R. Roddy and Mr. Milo Moody and some other attorneys about the cases of these defendants and a copy of that discussion taken from the official record will be filed and marked Exhibit #1 and made a part of this affidavit as fully as if copied and set out herein.

That the case against Clarence Norris and Charlie Weems was tried first and prior to the trial that the Governor of the State of Alabama had provided military forces with 107 men and officers with six or eight machine guns and rifles commonly used in military warfare to guard the courthouse and jail and to guard these defendants, prior and during the trial and these military officers had surrounded the courthouse and were keeping the hostile mob [fol. 102] or at least keeping away from the courthouse persons that had no business in the courthouse and who might wish to do violence to the affiant or someone of the defendants and while these guards were on duty, the case against Clarence Norris and Charlie Weems was tried and there was great excitement prevailing throughout the county and in Scottsboro at the time and when the jury reported in this case, the case against Haywood Patterson had been started and his jury was in the jury room adjoining the court room when the jury in the Clarence Norris and Charlie Weems case made its report imposing death penalty, and thereupon there was a demonstration in the courthouse by citizens clapping their hands and hollowing and shouting and soon thereafter a demonstration broke out on the streets of Scottsboro and not long thereafter the Hosiery Mill band came into the business district apparently celebrating the victory of the State and paraded through the public street and long in front of the courthouse making music for the entertainment of the crowds and at a time when the whole atmosphere was surcharged with excitement and this demonstration was carried on in the presence and hearing of jurors who had to try the third case composed of Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams and the excitement which had been produced by the seriousness and enormity of the charge made against the defendants and added to this the newspaper and press circulated stories through Jackson County which were generally read and accepted as the facts, when in truth these stories were, many of them, utterly untrue and when these defendants had no newspaper to print anything for them and when they had no attorney to write or publish anything on their side or in their defense, or showing that they were innocent and why their identity could be easily mistaken, but notwithstanding these disabilities and these unfortunate circumstances there was a hostile demonstration in the court room and a hostile demonstration through the streets and on the sidewalks in the town of Scottsboro and then a parade by the Hosiery Mill band apparently celebrating and felicitating the jurors upon their verdict and musical demonstration in cooperation with the demonstration put on by the citizens in the streets and on the sidewalk following the verdict in the case against Clarence Norris and Charlie Weems. The jurors who were summoned in the cases next to be tried were exposed to these demonstrations and celebrations (possibly they participated in the celebration) and they would have to be more than human not to be [fol. 103] affected by these demonstations, and the effect upon the jurors could not help but be adverse to the defendant then on trial and yet to be tried.

These demonstrations were produced because of high excitement in Jackson County, and that the people who had gathered at Scottsboro to witness these several trials had produced so much excitement that apparently a general holiday was being taken by the Hosiery Mill band so that at the most inopportune time for the interest of these defendants this Hosiery Mill band was parading the streets of Scottsboro and it is reported that they played (such pieces as "Hail, Hail, the Gang's All Here" and "There Will Be a Hot Time in the Old Town Tonight"), but whatever it was and whether this band was innocent and appeared as a mere coincidence or whether it was purposely on the streets can make no difference because the effect on the jurors at that time trying Haywood Patterson and the next jury later selected from the crowd that tried the other five defendants was adverse to them and manifestly to their disadvantage and detriment, and the fact that jurors were or might have been adversely affected by matters happening outside of the court room which adversely affected the interests of the defendants or anyone of them was a denial of due process of law to the defendants and adversely affected the defendants and necessarily denied to them a fair and an impartial trial by free and unbiased and imparial jurors.

Affiants further state that because of the enormity of the charge in the first instance they were not given a fair trial. Second, that because they were negroes and paupers and locked in jail without an opportunity to confer with or employ counsel they were not given a fair trial. Third, that the alleged victim was a white woman. Fourth, publications in newspapers averring that the proof of guilt was most positive and falsely alleging that some of the defendants or all of them had confessed their guilt, which was not true, but the public throughout Jackson County was made to believe that such were the facts, rendered an impartial trial impossible; the fact that the defendants were compelled to go to trial represented by attorneys who, by their own admission in open court, stated that they were not prepared and had made no preparation whatsoever, constituted a denial of due process to the defendants and prevented a fair and impartial trial; this is especially true because in fact the defendants were neither represented by [fol. 104] counsel retained by them or anyone on their behalf authorized to make such retainer, nor was such counsel appointed by the court as trial counsel, according to the record of pages one to eight of the Weems-Norris record annexed hereto and marked Exhibit 1, and made a part hereof, proves that so far as Mr. Roddy is concerned, he made no pretensions that he was retained as attorney for the defendants, and the record shows that he was not appointed as attorney for the defendants; he was, in fact, present merely as an observer by his own admission and made no pretensions at having prepared the case for trial, but sought a change of venue, and that the record shows Mr. Roddy was appointed for the purpose of arraignment only, and when Mr. Roddy appeared the court released all the members of the Scottsboro Bar after arraignment, and when the trial was about to start during the discussion Mr. Mooddy agreed to assist Mr. Roddy who was never employed and who appeared only by the courtesy of the court, and the defendants were never asked, according to this record, their wishes or desires in the premises and yet the lives of all eight of them were at stake and were later demanded at the hands of a jury at a trial about to begin without an opportunity to tell their trial lawyer their separate defenses, and when forced into trial without witnesses and without an opportunity to secure any witnesses, and in a county hostile to their race and when there was no chance to communicate with the outside, to either parents, relatives or friends, and when they had no money and no one to advise them of their legal or constitutional rights and when they were overawed and intimidated and threatened by a mob of hostile citizens from the day they were arrested until after the sentence of death was pronounced upon them and because of their immature years and because seven of them can neither read nor write anything of consequence and are ignorant of the law and did not know how to prepare their case for trial or how to protect their rights or themselves from insult, embarrassment and intimidation and especially when a mob had gathered in Scottsboro after they were arrested and the Mayor and public officials had to make speeches to try to persuade the mob to adjourn and it was necessary for military forces to come to Scottsbor- and to by force of arms disperse this hostile and enraged gathering and to require them to leave the town of Scottsboro and from the County of Jackson the trial jury for all the defendants had to be selected and by reason of a custom of long standing there was not one negro selected for the entire trial, throughout the whole county where a population of 30,000 people when a large number of negro land-owners were [fol. 105] qualified jurors, or for jury service and members of the negro race; all of these indubitable and undisputable facts lead directly to the inevitable and irresistable conclusion that these defendants did not have and can never have a fair and an impartial trial in Jackson County as they are entitled to have under the law of the State of Alabama and under the law of the land.

Affiants further show that the trial was unfair because damaging evidence was admitted in the trial against some of them about Ruby Bates and they were not indicted or called upon to answer any charge about her and any testimony with reference to her should have been excluded and not considered by the court or jury under the indictment upon which they were tried.

Affiants further state that before reaching Paint Rock, Alabama, they did not leave the train because they were not guilty and had no motive or reason to run and they did not run or make any attempt to leave the train or to get away, but a number of other negroes did leave the train and did get away and were never arrested.

Affiants are advised that the prosecuting witness, Victoria Price was a woman of bad reputation and bad character and that the defendants ought to have been permitted to prove on the trial that she was of bad character and bad reputation and the refusal of the court to permit her to be cross-examined on this subject was error and for which a new trial ought to be granted. See affidavits of Silas Johnson and others filed in this cause. Affiants are advised that newly discovered evidence touching the character and reputation of Victoria Price and Ruby Bates has been filed in this case and these affiants did not discover or know about this evidence and its importance until since the trial, but if they had known about it they had no chance to have procured it and to produce it on the trial at Scottsboro, because the witnesses who made the affidavits were afraid to go to Scottsboro to attend the trial and lived out of the State of Alabama where they could not be compelled to attend the trial by court process of this State.

Affiants are advised that there were no safeguards thrown around the jury prior to the starting of the trial in order to keep them free from contact with the population in general and that they were permitted to read hostile newspapers and to witness the demonstration in the Courthouse and on the streets of Scottsboro and to witness the parade of the Hosiery Mill band through the streets when [fol. 106] Clarence Norris and Charlie Weems were convicted and that there was no effort on the part of military authorities to keep jurors, not yet placed on the jury, separate and apart from the people in general and these jurors were exposed to excitement, hostilities and prejudicial newspaper articles combined with public feeling surcharged with excitement produced a situation impossible of correction and the result of which adversely affected the defendant, confused counsel who tried to represent them, overawed the men who sit on the jury and rendered an impartial, orderly, quiet, judicial hearing impossible and as a direct result thereof these affiants are about to be deprived of their lives without due process of law and in violation of the most sacred constitutional rights ever provided for in this State and under the laws of the land.

Affiants made application for a change of venue and in their application swore they could not get a fair trial and the events which happened during these several trials confirmed and verify that contention and the trial should have been removed from Scottsboro to some other county as requested in their application for a change of venue.

Affiants are advised that the trial judge did not question the jurors who tried these defendants on the subject as to whether or not they held racial prejudice and whether or not they would give a negro the same fair, patient, impartial hearing that they would give a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsbor-, there was no man on any of these juries under all the excitement that was qualified to meet the legal requirements of an impartial uninfluenced and unbiased juror as provided for by the laws of the State of Alabama and the laws of the land.

Affiants further state that they were threatened with lynching, terrified by mob and confused and embarrassed through the trial by hostile words, threats and public demonstrations and the jury which tried them knew or had a chance to know and were exposed to these illegal influences, and their minds influenced by an atmosphere surcharged with hostility, partiality, prejudice, caprice and rancor against the defendants and their lives were demanded as a sacrifice therefor without due process of law, then they were not guilty of the charge contained in the indictment against them.

The defendants demanded a special venire or a special list of jurors for their separate trial and this request was refused and denied and the defendants had to go to trial without the right to select or to be consulted about select-[fol. 107] ing the jury to try these cases. These defendants did not challenge any juror and did not know that they had a right to challenge jurors.

The indictment in these cases fail to state sufficient facts in that no time or place or a statement of circumstances were set out giving the facts constituting the alleged offense so as to enable the defendants to properly prepare for trial and to be protected against double jeopardy. There was a number of white boys on this train who were available as witnesses for the State and were not introduced by the State and no reason given for not doing so and the name of one or more of them appeared on the indictment.

(Signed) Olen Montgomery. (Signed) Eugene (his X mark) Williams. (Signed) Willie (his X mark) Robertson. (Signed) Haywood Patterson. (Signed) Charlie (his X mark) Weems. (Signed) Andy (his X mark) Wright. (Signed) Clarence (his X mark) Norris. (Signed) Ozie (his X mark) Powell.

Subscribed and sworn to before me on this 15th day of May, 1931. (Signed) U. L. Heutees, Notary Public. My commission expires Feb. 27th, 1935. **(Seal.)**

[File endorsement omitted.]

[fol. 108] **EXHIBIT NO. 1 TO AFFIDAVITS OF THE EIGHT DEFENDANTS, STATE V. HAYWOOD PATTERSON ET ALS.**

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSIONS, 1931

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLATENCE MORRIS

Appearances:

H. C. Bailey and Proctor & Snodgrass, attorneys for State.

Stephen W. Roddy and Milo Moody, attorneys for defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson, et als. What says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as Your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that; the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that Your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counseil I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I want to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of [fol. 109] friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

The Court: The only thing I am trying to do *si*, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course, if they have counsel, I don't see the necessity of the court appointing anybody; if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it, Mr. Parks, and [fol. 110] that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it; if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and I certainly haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it, I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial, and I think the boys would be better off if I step entirely out of the case, according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it; I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court, and not to the defendants; I could not take the case for a fee, because I am not practicing in the general Court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath; that is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel; if he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent.

[fol. 111] The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't, of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case, and I recognize the principle involved, and the fact that I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment in the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk any duty, and I know my duty is whatever the court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the court, I was not trying to sh-rk any duty whatever, and I want the court to understand my attitude in the matter; I am ready to obey any order of the court.

The Court: Of course, that is a matter with counsel; I know nothing about these affairs.

Mr. Proctor: I wanted the court to understand why it was I agreed to become assisted with counsel for the State; thinking they had counsel, I accepted employment on this side, thinking, of course, they had counsel, and I would be relieved from that duty, and I have been conferring with the Deputy Solicitor about matters pertaining to the trial. [fol. 112] I am ready to do whatever the court thinks is the proper thing to do.

The Court: I will leave that with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear with their assurance they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue—Shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have seasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think, in the first place, comes too late.

The Court: I would not require you, of course, I will give you time to answer it.

Mr. Bailey: That is the first ground. If Your Honor permits the filing of it, I move to strike it because it is nothing except conclusions; there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no petition concerning that newspaper article, no affidavit attached, and no witness in support of this. Now, we first object to the filing and the consideration of it. If Your Honor [fol. 113] permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time, Solicitor; I know the circumstances sometime but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion. The proof even of a newspaper article alone is not sufficient; there is no affidavit attached in support of it. Now, Your Honor might permit me to offer testimony on it, but to move to strike it and to demur to it.

Mr. Roddy: Your honor, I might suggest that the petition does not only base conclusions, but it tells facts about troops being here, and Your Honor, please, we offer the Sheriff at this time to show the reason for it and why—the matters set out in the petition itself.

The Court: Well, do you want time to answer it? Have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff, if the court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes, sir.

M. L. Wann examined as witness on defendant's petition:

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this county?

A. Yes, sir.

Q. Did you deem it necessary to call out a unit of the National guard to bring these defendants to court to trial.

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I didn't see any guns there or anything like that, and I did not hear any threats, but——

Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court?

Mr. Wann: Today?

[fol. 114] Q. Yes, sir?

A. Yes, sir; I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir; I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here, but people all over the county—

Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?

A. Yes, sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes, sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse, have you?

A. No, sir.

Q. Is it your idea as Sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. No, sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the popula-

[fol. 115] tion of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think they can.

Q. Is that your judgment?

A. Yes, sir.

Q. You have heard nothing of any threats or anything in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes, sir.

Mr. Proctor: That is all.

Redirect examination.

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the court house?

A. Yes, sir.

Q. And there is a great throng around this courthouse right now that would come in if you did not have the troops?

A. Yes, sir; they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them; there are several from Madison and Marshall and DeKalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes, sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No, sir; that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail, that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir; I thought it was my duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

[fol. 116] Q. You have five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Roddy: I might ask Major Starnes.

Major Joe Starnes, witness for defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defedants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9:00 P.M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have in Scottsboro, you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

[fol. 117] A. This is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

Q. Now, your units of the National Guard have protected these men and have been with them on every appearance they have made in this courthouse?

A. That is correct.

Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes, sir.

Q. After these men were arrested, when did you first bring them back?

A. On Tuesday of the past week is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?

A. That is right.

Q. Then when did you bring them back?

A. Brought them back and arrived here at 5:15 this morning.

Q. You have had them here twice from Gadsden?

A. That is right.

Q. You bring them here and then carry them back?

A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here of course under orders from the Governor?

A. Yes sir.

Q. And you have been here under his orders ever since?

A. That is correct.

[fol. 118] Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro in Jackson County and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants?

A. I have not.

Q. From your knowledge of the situation gained from these trips over here I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

A. I think so.

Q. Have you seen any demonstration or attempted demonstration toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hostile demonstration.

Q. Your judgment the crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all, your Honor.

The Court: Anything further for the State?

Mr. Bailey: No, sir; we don't care to offer anything further. Now, was our objection to the newspaper articles noted?

The Court: Well, the motion is overruled, gentlemen.

Mr. Roddy: We want to except to your Honor's ruling.

The Court: Yes, I will give you an exception. Let the motion be filed, Mr. Clerk—I give you an exception to it, Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called, we have some we are not sure about.

The Court: Call the State witnesses Mr. Clerk.

(Witnesses called by the Clerk for the State.)

[fol. 119] Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages to the court.

The Court: We will see about it when we get to it. What says the State?

Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first, Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, sir; we don't demand a severance.

The Court: No severance is demanded—now, do you want to try them all?

Mr. Bailey: The State demands a severance and we will try under the first joint indictment Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the Court please, I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is, yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the Court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

The Court: I understand but I don't want to take that up now, I want to proceed with the others.

Mr. Bailey: As long as his age is not presented to the court, we want to proceed.

Mr. Roddy: Before these boys are placed on trial, we would like for Your Honor to pass on that.

The Court: I will pass on that, but we do that possibly some night when we are not engaged up here with the jury; of course, that is a matter, if it is raised, it comes up to be [fol. 120] passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call your witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the Court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. Ames; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the Court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for those witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect everyone of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here, and if Your Honor will grant me a few minutes' time, I might simplify these matters. I want to be of all the help I can with the court and everyone concerned, but there are some very material facts in the case; I have no motive in this world in appearing down here ex- [fol. 121] cept to get the absolute truth in this matter, and if Your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know, your Honor please, about our witnesses.

The Court: What about the witnesses, Mr. Sheriff? All right, gentlemen, if we don't get the witnesses here, I will allow you a showing for them. Is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject, of course, to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel pleased not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under rule, except as to the other defendants not on trial excused from the rule by court.

[File endorsement omitted.]

On the 19th day of May, 1931, the defendant filed in this cause, in support of his said motion for new trial the separate and several affidavits of Roberty Fearn, Bertha Lowe, Willia Crutcher, Allen Crutcher, the joint affidavit of Henry Cokley, Susie Cokley, and Georgia Haley, and the affidavit of Percy Ricks, which said affidavits are in words and figures as follows, to-wit:

[fol. 122]

AFFIDAVIT OF ROBERTY FEARN

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law that she resides in the town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them. She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fearn.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public. Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 123] AFFIDAVIT OF BERTHA LOWE

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price, the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White, who as affiant is told, formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at time affiant would see them often and again she would not see them for a month or longer.

She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as that is where she saw them, in negro sections of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

Subscribed and sworn to before me, May 19, 1931. (Signed) Lewis C. Golson, Notary Public, County of ——, State of Alabama. My commission expires on the 1st day of May, 1935. (Seal.)

[File endorsement omitted.]

[fol. 124] AFFIDAVIT OF WILLIE CRUTCHER

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law that she resides in the Town of Huntsville, Alabama and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with the affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Willie Crutcher.

Subscribed and sworn to before me May 18, 1931.
(Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 125] AFFIDAVIT OF ALLEN CRUTCHER

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute and she told affiant that she was going to make a trip in last year from Huntsville, and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Allen Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama, May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 126] AFFIDAVIT OF HENRY COKLEY, SUSIE COKLEY, AND GEORGIA HALEY

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON and EUGENE WILLIAMS et al., Defendants

STATE OF GEORGIA,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9th, 1916, and that Eugene Williams her son, was born on December 6th, 1917.

These affiants further state that they heard about a boy named Eugene Williams being in trouble in Scottsboro, Alabama, but his age was reported as being 19 years old, and that they did not think it was Eugene Williams of Chattanooga, Tennessee, son of Mamie Williams, and for that reason they did not send an affidavit about his age earlier than this time, and that this is the first they heard that it was Mamie Williams' son and a grandson of Georgia Haley and a nephew of Henry Cokley and his wife, Susie Cokely.

We were living at Chattanooga, Tennessee, just across the State line from Rossville, Georgia, when Mamie Williams was married and were living with her at the time Eugene Williams was born, and we are positive about his age and the date of his birth, as set out in the foregoing affidavit.

(Signed) Henry Cokely. (Signed) Susie Cokely.
(Signed) Georgie (her X mark) Haley.

Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk, Superior Court, Haralson County, Ga. (Seal.)

[File endorsement omitted.]

[fol. 127] Chambers of Judge Superior Courts, Tallapoosa Circuit

J. R. Hutcheson, Judge, Douglasville, Georgia

At Chambers,
Douglasville, Ga., May 6th, 1931.

I do hereby certify that the signature of S. O. Smith, Clerk of the Superior Court of Haralson County, Georgia, is his genuine signature to the attached four pages of typewritten pages.

(Signed) J. R. Hutcheson, Judge S. C., Haralson Co. Ga.

AFFIDAVIT OF PERCY RICKS

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402, 2404, and 2406

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OZIE POWELL, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

Percy Ricks makes oath that he was on the train that the above named defendants were riding from Chattanooga to Paint Rock, Alabama, on the day that defendants were arrested at Paint Rock, Ala.

That, when the train got to Stevenson, that he saw the two white girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Ala., going towards Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the [fol. 128] other one had on a dress, and that he saw them get on the train and they went into a freight box car.

Later he saw them get out of this box car when the train pulled over on the Southern track at Stevenson he saw them get back into the box car, and they were in it when he last saw them until they got to Paint Rock, and at Paint Rock and they were on the ground running along the train and the second girl was following the first one and looked like they were trying to get away from the train and the officers stopped them.

There was a number of officers there armed and that affiant saw them getting some of the boys out of box cars and some on top of the train, and scattered all along the length of the train.

He saw the car called the gondola on which the girls claimed to be riding and it was nearly full of crushed rock called "Chatt" and loaded within about two feet of the top of the car.

He saw one of these girls a week before this trouble and she was hoboing from Stevenson to Huntsville on a freight train.

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour.

Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Ricks.

Subscribed and sworn to before me on this the 16th day of May, 1931. Geo. W. Chamlee, Notary Public, Hamilton County, Tenn. (Seal.)

[File endorsement omitted.]

[fol. 129] Thereupon the defendant offered the following testimony in support of said motion:

Major Joe Starnes, a witness for Defendant, testified:

Direct examination:

I was in the court room. There was considerable demonstration in the court room when the jury rendered their verdict, by yelling and clapping of hands in the court room here. I know where the jury in the case of this defendant was at that time; it was in the jury room to my left, I heard some shouting on the outside of the court room.

Cross-examination:

The jury that was trying the case of this defendant was in the jury room at that time, and the door was closed. I did not say that there was a tremendous outburst of applause; I said there was considerable applause, and later on I heard some shouting out in the yard, someone holl*ow*ing; that is all I heard. The shouting was not in the courthouse, and the main part of the building was between the shouting and the room in which the jury was located; that shouting I heard was on the outside of the courthouse, on the North side of the courthouse hrere, and the jury that had the case of this defendant was in the Southeast side of the courthouse.

Redirect examination:

There were a number that shouted in the court room here, and some clapping of hands.

Captain **Roland Fricke**, a witness of Defendant, testified:

Direct examination:

At the time the report of the jury in the Norris and Weems cases was handed in here, the jury in the case of the defendant was in the jury room. Just after the applause in the court room, I was in there and noticed that the transom over the door from the court room to the jury room was partly opened. My attention was called to it by you; the jury in the room there was about thirty feet, I guess, from the applause.

Cross-examination:

There was nothing I know of to indicate that the jury [fol. 130] knew or understood what the applause was about. The door was closed between the jury room and the court room at the time of the applause. I do not know and could not say that the jury knew what the applause occur-ed about. There is a brick wall between the two rooms, with the exception of the door there.

The hearing of said motion as last amended was contin-ed by the Court from time to time until the 5th day of June, 1931, at which time the following proceedings thereon were had:

T. G. **Elkins**, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't — where I was, only I guess I was up at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone out on the street holler "Whoopee," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that. I heard a band some time but I didn't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

I read the Scottsboro papers about the attack on these girls. I believe I read the Chattanooga papers. I think those papers said these men, or some of them had confessed their guilt.

When I was examined as a juror, I was asked questions as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't [fol. 131] say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them on parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got here. I was put on Jury No. 3. That was the jury that tried the five defendants. I was is Davis' store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house.

The hosiery mill is three or four blocks from the court house. I couldn't say what time of the day the Norris and Weems jury reported.

I didn't pay any attention to the time of the day. It was in the latter part of the afternoon. I didn't pay any attention to the hour.

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for*m*. However, I saw no indication of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd off the court house grounds. They also had them inside of the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

I saw several heavily armed soldiers in the court house, three or four, I couldn't say how many, as well as out in the street, during the progress of these trials.

[fol. 132] W. G. SARTIN, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris case, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there were several thousand people around here. I don't know how many there was. Around the square is where I heard the hollering. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing. I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were so*lid*ers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be af*r*ter court had adjourned and the soldiers were ready to go home; at the time I was in the court room, when it first began. I was not up here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the [fol. 133] square. The playing of the band or the hollering did not in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began me and Mr. H. H. Hennegan were standing there talking. I don't know what the hollering was about. When I heard the band playing I didn't know what that was about.

Redirect examination:

Later I heard first one and another state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I went on the jury and tried the five, I knew what this demonstration was about in the other case. Somebody had already told me about it but I don't know everything people tell me. When I went on the jury that tried the five negroes, Case No. 3, I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house. I didn't measure it. It is a short ways down to the corner. I cannot tell you how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollowing. I do not know what that band was playing.

Recross-examination:

During the time of the trial, I did not see a demonstration about a truck with a big wheel and tire. I don't know what that was for. I did not see that truck pulling a big tire around the square.

L. R. Jones, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

My name is L. R. Jones. I live about three miles from Bridgeport. I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court house when the jury returned its verdict in the first case [fol. 134] tried. I was at home, or on my way home. I had left the court room, and left Scottsboro. I didn't hear any demonstration of any sort.

J. M. **Barnes**, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live at Bridgeport. I was one one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere between Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

Willie J. **Wells**, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the Negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported, in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't remember whether it was in the afternoon. I didn't have any time-piece, and don't remember what time it was. I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river, from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I r-member the questions that were asked me before they put me on the jury.

Counsel for movant then propounded to the witness the following question:

[fol. 135] Q. What did they ask you to qualify to as a juror?

The State objected to the question, the court sustained the objection, and to this ruling of the court movant duly and legally reserved an exception.

Counsel for movant thereupon propounded to the witness the following question:

Q. Were you asked whether or not you held racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

Richard Hill, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported, I was in town somewhere. I was outside of the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the evening some time. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all round the court house and inside as well; I was not up here. I don't know as I later saw a national guardsman in the court house. I was not back up here that evening. Later, when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass band playing after the jury report. Nobody told me what that hollering was about. I never did learn what it was about. I have heard them talking since what it was about. I heard that some time the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

[fol. 136] **Roy Wilbourne**, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I had gone home that evening when the jury reported this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported. I don't know as I heard about the demonstration the next morning. I heard about the verdict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel of movant thereupon propounded to the witness the following questions:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you had racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

W. C. Scogin, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the one that tried five of them. When the jury reported in the first one of these cases, I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't [fol. 137] think there was a bra*nd* band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets, and playing. I- could have been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house. When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

Counsel for movant thereupon propounded to the witness the following question:

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

Counsel for movant then propounded to the witness the following question:

Q. When you were qualified as a juror were you asked as to whether or not you held racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the court movant duly and legally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

[fol. 138] B. M. Holloway, a witness for movant, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of these negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for this demonstration. I just heard them yelling. It was generally understood by everybody that that was the reason for it.

I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

Counsel for movant thereupon propounded to the witness the following question:

A. When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection and to this ruling of the court movant duly and legally reserved an exception.

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial, I heard the organ and learned the fact that it was the Ford agency playing the organ. I heard they had different kinds of Ford cars going around.

[fol. 139] Redirect examination:

I didn't see that. I was in the court room.

Counsel for movant thereupon propounded to the witness the following questions:

Q. Before you went on the jury did anybody tell you what those negroes were going to be tried for?

The State objected to the question, the court sustained the objection, and to this ruling of the Court movant duly and legally reserved an exception.

C. C. Allen, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here when the jury reported the first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was out of town. I heard a little about the demonstration, but not much said about it. I did not hear any one of the other trials. When they tried the first case I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles away. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

Counsel for movant thereupon propounded to the witness the following question:

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

The State objected to the question, the court sustained the objection, and to this ruling of the court movant duly and legally reserved an exception.

Cross-examination:

I am not a minister of the Gospel.

[fol. 140] **Lee Hicks**, a witness for movant, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

Counsel for movant thereupon propounded to the witness the following question:

A. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the Court movant duly and legally reserved an exception.

Luther Ballard, a witness for movant, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the third jury, the one that tried five of them, I believe. When the jury in the first one of those cases reported, I was between here and Stevenson, or at Stevenson.

I was outside of the city of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear anybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National [fol. 141] Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

John Venson, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. I live in Scottsboro. I am a Ford dealer here. While the trial of these negroes was in progress here the Ford people made a demonstration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a parade here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at six o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That was about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. They broke up our demonstration, and I went over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I r-member while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't think there were ten thousand. I wouldn't think there were five thousand. I wouldn't guess there was [fol. 142] five thousand people at any one time on the street; I don't think so, but I don't know. The court house never was full. There was a crowd around the court house. There were National Guard officers around. I just r-member while we were down there that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them beofore. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citizens from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them come in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

Redirect examination:

Guard Mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollards, which said affidavit is in words and figures as follows, to-wit:

[fol. 143] IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superintendent, Secretary and Treasurer, and Pay master, respectively, and in the order in which our names are signed of The Margarett Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mull during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year. We have this day examined the payroll records in our office and find that Victoria Price was in our constant employ during the months of October, November, December, 1929 and January, February, March and April 1930. The records show that she worked each week during the above months. We further certify that she was a good worker and her character around and in the mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. N. Reynolds, (Signed) W. M. Wellman, (Signed) J. V. Pollards, Affiants.

STATE OF ALABAMA,
Madison County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 144] On June 6, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits filed by defendant, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF L. L. MAYNOR

STATE OF ALABAMA,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts I have lived in Madison County, Alabama, and for about the last 8 years I have lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Ala., to board and have been boarding in her home since that time. She is the mother of Ruby Bates who together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago. During all this time that I was at Mrs. Bates, I was either hauling off logs of Monte Sano Mountains or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee, any time during 1929 or 1930.

Ruby Bates was a quiet, modest girl and much of the time while I was there, she would go to church and Sunday school and I never heard any question of her character up until a little while before this trouble, and that was after she had begun to associate with Victoria Price.

There are dozens if not hundreds of people in Huntsville [fol. 145] who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

Sworn and subscribed to before me this the 6th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendant, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF P. W. CAMPBELL

STATE OF ALABAMA,
Jackson County:

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizens of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County Sentinel, a newspaper published at Scottsboro. Some four weeks ago I went to Chattanooga, Tennessee in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chattanooga, concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hackett and he placed at our disposal two of his men who went with us to the part of Chattanooga where these negroes lived. After [fol. 146] considerable effort, we located some of them, with the following results: We found Asberry Clay and his wife, Savannah Clay, and Solicitor Thompson read to them the affidavits which tehy were said to have made. They both said that there was certain statements in the affidavits which they did not make and which they did not know were in there. Especially with reference to these women living with negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which he made. We then found Tom Landers, whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping. We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters wher- we talked with Mrs. Croft, Police Matron, who said that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with any offense and that if they had, she would have had some recollection of it.

On the other hand, the Police Records in Chattanooga do show that two of the Chattanooga negroes, to wit, Haywood Patterson and Roy and Andy Wright have had Police Records and the Police authorities stated that they were very bad negroes and had given them quite a great deal of trouble.

Dated this the 15th day of June, 1931.

(Signed) P. W. Campbell, Affiant.

[fol. 147] Sworn and subscribed to before me this 13th day of June*k* 1931. (Signed) C. A. Cann, Clerk of Circuit Court.

(Signed) C. A. Cann, Clerk of Circuit Court.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendant offered in evidence, in support of his said motion, the following separate and several affidavits:

Affidavits of Oliver Love, McKinley Pitts, Isaac Hinch, J. P. Hobby, Annie Linson, Asberry Clay, Savannah Clay, Willie Douglas, Tom Sanders and Silas Johnson.

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fearns, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, and affidavit of Percy Ricks. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollarde; affidavit of L. L. Maynor and affidavit of P. W. Campbell. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of said motion to set aside the verdict and judgment founded thereon and to grant defendants a new trial.

ORDER OVERRULING MOTION FOR NEW TRIAL

On said June 22, 1931, after hearing and considering said motion, the Court overruled the same and refused to set aside the verdict of the jury and the judgment founded [fol. 148] thereon and to grant the defendants a new trial, and to this action of the court, defendant then and there reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, and Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendant in this cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions of the trial and proceedings in said cause, the same is accordingly signed and allowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of November, 1931.

A. E. Hawkins, Judge.

[File endorsement omitted.]

[fol. 149] IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 148, inclusive, contain a full, true, correct and complete transcript of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein the State of Alabama was plaintiff and Haywood Patterson was defendant.

I further certify that the said defendant did obtain an appeal to the Supreme Court (or Court of Appeals) of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and seal at office this the 16th day of January, 1932.

(Signed) C. A. Wann, Clerk Circuit Court.

[fol. 150] IN SUPREME COURT OF ALABAMA

SUPPLEMENTAL RECORD

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greetings:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to re-call and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Courthouse at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call: [fol. 151] Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymong Hodges, C. D. Paul, J. N. [illegible]gsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summoning all the within named Grand Jurymen this March 30th, 1931,

M. L. Vann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

State of Alabama,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County is hereby ordered to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Judicial Circuit.

[fol. 152] SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consist of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regularly drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of all jurors so drawn, both regular and special, the said list showing which are regular and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 153] Supplement to Appeal

Certificate of Appeal

STATE OF ALABAMA,
Jackson County:

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that this supplement of "Order fixing date for Special Session Grand Jury, Spring, 1931", "Clerk's Order to Sheriff to summon Grand Jury, at Recess", "Order fixing date for Special Session of Circuit Court", "Arraignment and order for trial", are a part of the record in the case of the State vs. Haywood Patterson case No. 2404, as it appears on the record of the Circuit Court of Jackson County, Alabama, and the same was inadvertently left out of the transcript in this case and I hereby certify that with this supplement to the transcript contains a full, true and complete transcript of the record and proceedings in the case of The State of Alabama vs. Haywood Patterson now pending.

To all of which I hereby certify to the Supreme Court of Alabama.

Witness my hand, and seal of office this the 16th day of January, 1931, at the Courthouse in Scottsboro, Alabama.

C. A. Wann, Clerk Circuit Court.

[fol. 154] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8th Div., 320

HAYWOOD PATTERSON

vs.

STATE OF ALABAMA

Jackson Circuit Court

ARGUMENT AND SUBMISSION—Jan. 21, 1932

Come the parties by attorneys and argue and submit this cause for decision.

[fol. 155] IN SUPREME COURT OF ALABAMA, OCTOBER TERM. 1931-32

8 Div., 320

HAYWOOD PATTERSON

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

JUDGMENT—March 24, 1932

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, Haywood Patterson, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the defendant, Haywood Patterson, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison, at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 13th day of May, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of said Haywood Patterson until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 156] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 320

HAYWOOD PATTERSON

v.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

OPINION—Mar. 24, 1932

BROWN, J.:

The appellant was indicted, tried and convicted of the offense of rape.

No question was raised on the trial as to the sufficiency of the indictment, which is in the form prescribed by the statute, and under the uniform decisions of this court was sufficient to advise the defendant of the nature and cause of the accusation he was called upon to answer.—Code, [fol. 157] 1923, § 4356, form 88; Myers et al. v. The State, 84 Ala. 11; McQuirk v. The State, Ib. 435; 5 Am. St. Rep. 381; Schwartz v. The State, 37 Ala. 460; Malloy v. The State, 209 Ala. 219, 96 So. 57; Doas v. The State, 220 Ala. 30, 123 So. 230.

We cannot, on the record before us, affirm error in the action of the circuit court on appellant's petition for change of venue. The only evidence offered in support of the petition was the oath of the movants; the articles appearing in the three newspapers; the testimony of Wann, the sheriff of the county, and Major Starnes, who was in command of the military company. This falls far short of showing to the reasonable satisfaction of the judicial mind an all pervading prejudice against the accused in the county of the trial, that would prevent him from obtaining a fair and impartial jury for his trial.

The accused and his alleged accomplices, who swore to the petition for change of venue, were confined in jail and were not in a position to ascertain the state of the general public feeling and sentiment of the county, and as was observed in Hawes v. The State, 88 Ala. 36 [54], their testimony is entitled to very little weight.

The publications in the local paper—The Sentinel—were not inflammatory, and contained no undue assumption of the guilt of the accused, and "Nothing appears to have been stated for the purpose of arousing indignation, or tending to create prejudice, except so far as the publication of the facts and circumstances of the alleged crime as they were developed might have had that effect; and in stating the facts there appears to have been no disposition [fol. 158] to suppress whatever was favorable to the accused."—Hawes v. The State, 88 Ala. 54.

In fact these publications were in a sense conciliatory, apparently designed to suppress rather than create an unlawful hostile sentiment against the accused.

As to the publications appearing in The Montgomery Advertiser and the Chattanooga paper, there was no evidence showing to what extent, if any, said papers were circulated in the county from which the jurors were to be drawn, and in the absence of such proof these publications were entitled to little or no weight.—Malloy v. The State, 209 Ala. 219.

The testimony of the witnesses Wann and Starnes, the only witnesses examined who were in a position to ascertain and know the nature of public feeling, goes to show that no threats or hostile demonstrations were expressed or made against the defendant; that the crowds that gathered were not disorderly, and really dispersed when advised by some of the leading citizens of Scottsboro to do so, and there is nothing in the evidence going to show race prejudice against the accused, or local prejudice in favor of the girls who are alleged to have been mistreated.

In fact neither the defendant nor his alleged victims resides in Jackson County.

In short the evidence shows nothing more than the gathering of a crowd impelled by curiosity, and not for hostile or punitive purposes.

True the evidence shows that the sheriff requested the Governor to send a company of the State Militia to protect the defendant, and that prompt orders to this end [fol. 159] were given and carried out, and that they were present during the proceedings; but this, without more, is not enough to authorize the granting of the motion.

We are, therefore, impelled to hold that the appellant has failed to sustain the allegations of his motion by sufficient evidence, and that the petition was denied without error.—Godau v. The State, 179 Ala. 27, 60 So. 908; Seams v. The State, 84 Ala. 410; Jones v. The State, 181 Ala. 63, 61 So. 434; Williams v. The State, 147 Ala. 10, 41 So. 992.

The facts going to show hostile demonstrations and threats toward the prisoner in Thompson v. The State, 117 Ala. 67, do not appear in the report of that case, but the record in that case shows that threats of lynching were made, and that a hostile crowd gathered with the purpose of following the sheriff and his prisoner to Huntsville where he was carried for safety, for the purpose of taking the prisoner from the sheriff, and followed as far as Greenbrier, where they met with providential hindrances that caused them to forego their purpose. Moreover, the person abused in that case was a mere child and a resident of Decatur, the county seat of the county where the trial was had.

[fol. 160] The only question raised on the trial as to the venire of jurors from which the jury to try the defendant was selected, is stated in the bill of exceptions as follows:

"Before proceeding to strike the jury in this case, defendant demanded a special venire, in addition to the regular venire, for the trial of this case. The court declined to allow a special venire for this case and required the defendant to strike a jury from the regular venire drawn for the week and the special venire drawn in the case of The State of Alabama v. Charley Weems and Clarence Norris, to which action of the court in not allowing him a special venire in this case, and requiring him to select a jury from the regular venire and the special venire drawn in the case of the State v. Charley Weems and Clarence Norris, defendant duly and legally reserved an exception."

The case of this appellant, which was numbered 2404, in the circuit court, was argued and submitted on this appeal along with the case of Charley Weems and Clarence Norris, which was a joint indictment against this appellant, Charley Weems, Clarence Norris, and others, numbered 2402 in the circuit court, and the record in this case, as well as the record in the other case, shows that all of the defendants, including appellant, were duly arraigned on March 31st, 1931, in cases numbered 2402 and 2404; that they interposed a plea of not guilty, and both of said cases were set for trial on April 6th, 1931; that the court ordered that the jury to try the cases so set, should consist of one hundred jurors, composed of the regular venire of jurors [fol. 161] drawn for the week beginning April 6th, consisting of seventy-five, and twenty-five special jurors, then drawn from the jury box of the county in the presence of the defendant and his counsel, and the sheriff was ordered to summon all of said jurors to be present on the date set for the trial, and to serve each of the defendants with a list of the jurors so drawn and ordered summoned, together with a copy of the indictment, and that said order was duly executed by such service by the sheriff, on April 4th, 1931. The venire of jurors so drawn and summoned constituted the special venire for defendant's trial, and was in strict compliance with the statute.—Code of 1923, §§ 8644, 8649.

The section of the Code last above cited—§ 8649—provides: "Whenever the judge of any court trying capital felonies shall deem it proper to set two or more capital cases for trial on the same day, said judge may draw and have summoned one jury or one venire facias of petit jurors for the trial of all such cases so set for trial on the same day."

Prior to the enactment of this statute the law required a special venire for each case, whether it was set for trial along with other capital cases or not.—Walker v. State, 153 Ala. 31, 43 So. 640; Adams v. The State, 133 Ala. 166, 32 So. 227; Rambo v. The State, 134 Ala. 71, 32 So. 650.

But the quoted statute changed this rule as applied to cases set for trial on the same day.—Umble v. The State, 207 Ala. 508, 93 So. 531; Stewart v. The State, 18 Ala. App. 92, 89 So. 391.

[fol. 162] The contention, therefore, of the appellant, that he was entitled to a special venire other than the special venire so drawn and constituted is without merit.

The State's witness, Victoria Price, the person alleged to have been raped, on cross-examination by the defendant's counsel, testified, inter alia: "I have been married; I have been married twice. Both of my husbands are not now living; one of them is dead." Defendant's counsel thereupon asked the witness: "Are you divorced?" This question was objected to by the solicitor, and the court sustained the objection, and properly so, because the question clearly called for immaterial evidence.

This witness was also asked on cross-examination: "Did you ever practice prostitution?" Objection to this question was likewise well sustained. There was no evidence at this time in the case, and, as for that matter, no such evidence was adduced on the trial, going to show that the defendant had intercourse with the witness by and with her consent; therefore, the question elicited immaterial evidence.—Griffin v. State, 155 Al. 88; Rice v. State of Florida, 35 Fla. 236, 17 So. 286; Story v. The State, 178 Ala. 98; 22 R. C. L. 1208, § 42.

Previous chastity is not an essential element of the offense charged in the indictment, and where this is so, rape may be committed on an unchaste woman, or even a common prostitute.—Bailey v. The Commonwealth, 82 Va. 107, 3 A. L. R. 87; 22 R. C. L. 1175, § 5.

For like reasons the objection of the solicitor to the question, "Do you know whether or not these girls had a venereal disease?", was properly sustained. Moreover, to have pursued the investigation proposed by this question would have engendered an unprofitable multiplication of the issues.—Southern Railway Company v. Plott, 131 Ala. 312.

[fol. 163] The remaining questions relate to the order of the court denying the motion for a new trial.

This invites a review: (1) of the evidence and its sufficiency to support the verdict; (2) of the proceedings on the trial for errors alleged to have been committed prejudicial to the defendant, and, (3) whether or not evidence alleged to have been discovered since the trial is such as requires that a new trial be granted. These questions will be treated in the order stated.

The evidence without dispute proves the corpus delicti, — That is, that Victoria Price was forcibly ravished, — and the single litigated question was whether or not the defendant was one of the persons guilty of the offense,— a question of identity.

The evidence shows that the said Victoria Price, a white woman twenty-one years of age, on the occasion was riding on a fast freight train running between Chattanooga, Tennessee, and Huntsville, Alabama, in a gondola car partly laden with chert or gravel, with her girl companion, Ruby Bates, white, age seventeen years; that there were seven white boys in the same car. The girls were garbed in overalls; that twelve boys of the negro race attacked the white boys and forced all of them, except one Gilley, the smallest of the white boys, off the train while it was in motion, and then using force stripped the girls of their outer garments, and six of the negroes ravished Victoria Price and six ravished the other girl. The State witnesses identified the defendant as one of the ravishers of Victoria Price. The evidence further shows that when the train was stopped at Paint Rock, by the deputy sheriff and the Posse comitatus, the alleged victim, Victoria Price, was in a state of exhaustion, requiring immediate medical atten- [fol. 164] tion; that when the two young women were examined on the afternoon of the same day by Dr. Bridges, a physician at Scottsboro, to quote from his testimony, "I found their vaginas were loaded with male semen, and the young girl was probably a little more used than the other, the other not showing as much. On the body were bruises on the lower part of the groin on each side of Ruby Bates, that is the young one, and there was a bruised spot around the hips, or the lower part of the back, on the other girl, the Price girl, a few scratches, small scratches on the hands and arms, and a blue spot here (indicating) on the neck of one of them. I think that was Mrs. Price, I will not be sure about that."

The defendant's contention is, and he offered some testimony to sustain this contention, that while he was on the train he did not go on the car where the girls were, and did not participate in the affray with the white boys, but remained on another part of the train. This was the substance of his own testimony. He testified, however, that one of the white boys walked by where he was before the fight and almost pushed him off the train, and some words passed between him and said white boys.

Roy Wright, one of the defendant's companions traveling with him, who was not on trial, and who was not convicted on his subsequent trial, as was stated in argument at the bar, was offered as a witness by defendant, and testified:

"My name is Roy Wright. I know this boy that just left the stand. I was on the train with him. I have a brother here that was on the train. He works in Chattanooga for the Lookout Furniture Company. My mother works there and has been working there a pretty good while. I am fourteen years old. I got on the train with [fol. 165] this defendant at Chattanooga. Gene Williams, Andy Wright, the defendant and I all left Chattanooga together. We were intending to go to Memphis. This boy (defendant) did not have anything to do with those girls on that train. He was not down in the car with those girls; he was standing up on top of a box car. I saw a pistol. A long, tall, black fellow with duck overalls on; that is the only pistol I saw. This boy (defendant) did not have a knife. He did not open his mouth to the girls. I saw the girls on the train. They were on an oil car when I saw them. There were nine negroes down there with the girls and all had intercourse with them. I saw all of them have intercourse with them. I saw all of them have intercourse; I saw that with my own eyes. The defendant was not down there; he was never down there with the girls. The boys I left Chattanooga with were named Haywood Patterson, Eugene Williams and Andy Wright."

On cross-examination the witness testified:

"I first saw the girls on the oil tank; that was up in Chattanooga before we left the yards. I was by myself when I saw the girls. They caught the oil tank in front of the car Haywood Patterson, Andy Wright and Eugene Williams were on and I caught a box car and walked over the box car and passed by that car the girls were in and walked on down to the oil car where they were. The girls were not in the gondola car then, but were in the oil car. I walked along the oil car until got to where these boys were. When I got down there, I found three boys there. The others were away up further; I did not see the other boys until we got to Stevenson.

"The girls rode the oil car down to Stevenson and then got off that car and got in this gondola, and then we boys got on the car together. There were fourteen colored boys on the car together. I had seen the girls in the gondola. [fol. 166] I did not tell the fourteen boys the girls were on the train; I did not tell them anything. I saw the girls myself. I do not know whether the other boys saw them, too. We met the other boys in Stevenson. We did not talk about the girls. I did not hear someone say, 'Let's go down there.' The way it was, those white boys, when we were laying back on the oil car, kept walking backward and forward across it and liked to have knocked the defendant off. When we left out of Stevenson coming this way, we were on a cross-tie car; we had gotten off the oil car. This cross-tie car was about three cars from the gondola these girls were in. We started on the cross-tie car from Stevenson. There were fourteen in the car when we started from Stevenson, all of us in the same car. There was nothing said about the girls being down in the gondola; we were talking about men. We knew that the men were down there, too. They had been passing by and we had a few little words. Haywood Patterson, Eugene Williams, Andy Wright and I were on the oil car and the white boys kept walking backward and forward and liked to have knocked Haywood Patterson off and Haywood said: 'How come you did not ask me to move,' and so the white man said: 'What do you care?', and Haywood said: 'I care a lot, I don't want to be knocked off,' and the white man said: 'We will settle it when the train stops.' It was the white boy that said that. He was on the train and he went up and got some more white boys and then the train stopped in Stevenson and they got off and went up in the gondola. The boys all got off and went up in the gondola. The white girls went up there with them, I guess, or they were up there. The negroes all got on a cross-tie car and stayed there. I was on the cross-tie car, all fourteen of us on the cross-tie car. The cross-tie car was not the next [fol. 167] car to the gondola, but was three cars from it. We all got on the cross-tie car. After the train started off, the first one of the white men came over, the one that had a big, black belt, and we were telling the other boys about it, that they were intending to put us off, that is that the white boys were intending to put us off, but we overpowered them and put them off; that occurred down in the gondola. We all made it up among ourselves to put them off; we made it up while we were over there on the cross-tie car, and after we all had made it up among ourselves to go over and put the white boys off, we all came along the cross-tie car and got over the box car and jumped down in the gondola. I did not put any of the white boys off, but the little boy and I saved the life of one of them. They were intending to put him off and every time his feet would hit, it would throw him in between the cars, and we took pity on him and told him we would let him alone, and they reached down and pulled him back up and he got on the gondola and Haywood, Eugene and Andy went back over the top and left the rest in there, and I was sitting up on the box car, together with Patterson. He and I were on one box car and Eugene and Andy on the other one. I was sitting there looking in on the gondola, but Andy, Haywood and Eugene were not. Haywood was sitting as far as that man (indicating) from me and the others were back on the other box car. Andy went down in the gondola when [fol. 168] they were putting the men off; it was not at Paint Rock, but right after the train left Stevenson; that is not Andy Patterson sitting right there (indicating); his name is Haywood Patterson. We all went down in there when we went to put off the men. Patterson went down there with us; all four of us went down in there to put them off. I was in the gondola when I told them not to throw him off but to bring him back.

"The long, tall, black fellow had the pistol. He is not here. I saw none of those here with a pistol. I saw five of these men here rape the girl. After we put the men off, we went back on the box car and I was sitting up on the box car holding to that wheel, looking down at them. I did not tell the officers I saw everyone rape her but me. I did not tell them that. I did not tell them that I saw the defendant rape her. I did not see the defendant rape the Bates girl. I did not see him do anything except he just helped put off the men. He was putting them off because they kept stepping across him and talking about putting us off. I saw one knife down in there. That boy back there (indicating) had it, Eugene; he is the one that had the knife. I did not see him hold it on the throat of that girl. He did not have hold of her throat, because he was sitting up on the box car. I saw one down in the gondola, a little white-handle knife. Clarence Norris had that knife; I do not know where he got it; I do not know what he did with it. He had it the last time I know anything about it. I am sure the defendant did not do anything."

[fol. 169] Some of defendant's other witnesses testified that the defendant was in the gondola car and participated in the affray with the white boys, but that he did not participate in the commission of the rape. This testimony tends to show a conspiracy between those who went into the car and forced the white boys from the train, and that this appellant aided and abetted in the commission of the offense.—22 R. C. L. 1176, § 6; State v. Burns, 32 Conn. 213, 77 Atl. 1083; 16 Ann. Cas. 465; State ex rel. Attorney General v. Tally, Judge, &c., 102 Ala. 25.

It is settled law, that an order refusing a new trial on the ground that the evidence is not sufficient to support the verdict, or that the verdict is contrary to the evidence, will not be disturbed, unless after allowing all reasonable presumptions of its correctness, the preponderance of the evidence against the verdict is so decided as to clearly convince the court that it is wrong and unjust.—Cobb v. Malone & Collins, 92 Ala. 630.

Prior to the enactment of the statute authorizing review on appeals of rulings on motions for new trials, such rulings were not reviewable, and the statute as first enacted applied only to civil actions at law. After its construction and application in the case cited and numerous decisions reaffirming the rule of that case, the statute was amended by the Act of September 22, 1915, p. 722, making it applicable to appeals in criminal cases, and since that amendment the rule announced in Cobb v. Malone & Collins, supra, has been repeatedly reaffirmed.—Dacs v. Lindsey Mill Co., 210 Ala. 183, 97 So. 647; Hatfield v. Riley, 199 Ala. 388, 70 So. 380; Price v. Price, Ib. 433, 74 So. 381. And the same rule is applicable to criminal cases.—Caldwell v. State, 203 Ala. 412, 83 So. 272.

[fol. 170] Applying this rule we are not able to affirm that the verdict of the jury is contrary to the weight of the evidence. On the contrary, the verdict is amply supported by the evidence.

We have heretofore treated all exceptions reserved during the trial, and have found nothing to warrant a reversal or justify the granting of a new trial.

But the appellant insists that he was prejudiced by the applause of the people in the courtroom when the jury, in another case involving the same transaction and other defendants, returned into court with a verdict of guilty and recommending the death penalty, and the court should have ex mero motu declared a mistrial and continued the case.

The only recital in the bill of exceptions which purports to give a full history of the trial is, after the examination of the first witness for the State was concluded, "Thereupon the following occurred: The Court: I think the jury is ready to report; Sheriff, take this jury into the jury room while the other jury reports. Thereupon the jury retired to the jury room." Following this another State witness was called and the trial proceeded. There is no recital of any disturbance or applause; nor was any question raised in respect thereto.

The motion for a new trial alleges that when the jury reported in the case of State v. Weems and Norris, after the jury in this case had been carried to the jury room and the door closed, but to which the transom was partly open, the spectators in the courtroom burst into applause, and this applause spread to persons on the streets around the courthouse, and that some were heard to exclaim "whoopee." And offered evidence aliunda, consisting of the exparte affidavits of the defendant and others, and the testimony of witnesses given ore tenus, some of which tended to prove these averments.

[fol. 171] The purpose of the statute which allows a bill of exceptions is to bring into the record all matters, not a part of the record proper, for the purposes of the appeal, that the court may have before it a history of the case, in so far as it is necessary to the questions presented for review, and all matters occurring during the trial in the presence of the court of which the court might take notice, must be stated in the body of the bill in the order of their occurrence, and to be reviewable on appeal, the general rule is that some action of the court must be invoked in respect thereto.—Hendry v. State, 215 Ala. 635, 112 So. 212; Dempsey v. The State, 15 Ala. App. 199, 72 So. 773; Decatur Water Works Co. v. Foster, 161 Ala. 176, 49 So. 759; Sovereign Camp, W. O. W. v. Gay, 20 Ala. App. 650, 104 So. 895.

It is not permissible to inject such matters—occurrences during the trial in the presence of the court—by evidence aliunde on the hearing of the motion for a new trial, for the all-sufficient reason that such practice would inject into such hearing a controversy in respect to which the court might be advised by his own personal observation, leading to the conclusion that the issue was without merit.—Hopkins v. Commonwealth, 210 Ky. 378, 275 S. W. 881.

We therefore hold that this matter is not presented, and error in denying the motion for a new trial cannot be affirmed on this ground.

It is also urged that there was some commotion on the streets when the jury reported in the Weems and Norris [fol. 171½] Case, and that there was a band parade playing popular tunes such as "There'll Be A Hot Time In The Old Town Tonight." The evidence goes to show, in fact is without dispute, that the parade was put on by the Ford Motor Company in demonstrating Ford trucks, and had no connection with the proceedings in this case against the defendant; that the noise was made by a graphophone with an amplifier to attract the people in Scottsboro to inspect the caravan of Ford trucks, brought into Scottsboro by the "Ford people" in no way connected with that county, except they had an agency there. The only other music was by the hosiery mill band playing for the guard mount of the militia after six o'clock in the evening.

The evidence as to the extent of the commotion or applause in the street was in conflict, and the evidence fails to show that it was such as to reach the ears of the jury, which was then confined in the jury room in the courthouse.

There was, therefore, nothing in these matters to put the court in error for refusing a new trial.

No question was raised on the trial as to the constituent element of the venire from which the jury was selected, except as heretofore treated, and there is nothing in the statutes regulating the selection of persons qualified to serve as jurors, or in the interpretation of said statutes by the courts that in any way discriminates against any citizen as to his right to serve as a juror; nor does the evidence show any such discrimination in this case.—Code of 1923, § 8603; Acts 1913, p. 59; Thomas v. State of Texas, 212 U. S. 278; Ragland v. The State, 187 Ala. 5, 65 So. 776. [fol. 172] The remaining ground to be considered relates to the question of newly discovered evidence, and as heretofore stated, there is nothing in the evidence, or the circumstances which any of the evidence tends to prove, going to show that the accused had sexual intercourse with the witness Victoria Price, by or with her consent, express or implied.

On the contrary, the evidence shows that she was forcibly ravished, and the defendant's sole contention is that he was not present in the car at the time the offense was committed, and did not aid or abet those who participated in the crime. In these circumstances evidence going to show specific acts of sexual intercourse between the alleged victim and other men, and her general reputation for chastity, was not material as going to show consent. Rice v. State of Florida, 35 Fla. 236, 17 So. 286; 48 A. B. R. 245; Griffin v. The State, 155 Ala. 88, 46 So. 481; 22 R. C. L. 1175, § 5; McQuirk v. The State, 84 Ala. 435, 4 So. 775.

It is the settled law of this State, which is in accord with the weight of authority, that newly discovered evidence which goes merely to the credibility of witnesses examined on the trial, is not such as authorizes the granting of a new trial. Fries v. Acme White Lead & Color Works, 201 Ala. 613, 79 So. 45; Southern Railway Company v. Wideman, Admr., 119 Ala. 565, 24 So. 764; Vanderburg v. W. W. Campbell, 64 Miss. 89, 8 So. 206; Goodwin v. Aaron, 203 Ala. 677, 85 So. 17; Harrell v. Gondolf, 6 La. App. 50; [fol. 173] Doiron v. Baker-Wakefield Cypress Co., 131 La. 618, 59 So. 1000.

The motion for new trial was, therefore, denied without error.

No reversible error appearing in the record and proceedings of the trial, the judgment of conviction is due to be affirmed. It is so ordered.

Affirmed.

Gardner, Thomas, Bouldin, Foster and Knight, JJ., concur.

Anderson, C. J., dissents.

[fol. 174] Clerk's certificate to foregoing paper omitted in printing.

[fol. 175] IN SUPREME COURT OF ALABAMA

No. 320

HAYWOOD PATTERSON, Appellant,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING—Filed March 25, 1932

[fol. 176] [Title omitted]

Comes the appellant, Haywood Patterson, and hereby makes application for a rehearing of said cause and moves the Court to set aside the judgment of conditional affirmance rendered in said cause and to grant him a new trial and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

G. W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allan Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Schrieber, Attorneys for Appellant.

[fol. 177] [Title omitted]

Now comes the appellant, Haywood Patterson, in the above cause and presents this his application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellant or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument in support thereof.

I

The Court erred and misconstrued appellants' assignment of errors, as set out in his brief and in this cause, and that his petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled him to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative of their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 178]

II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges that the appellants "Before the finding of the indictment forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legislature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 179] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting witness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due *rp*ocess of law, and the judgment against them was void.

[fol. 180]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in controvention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of their legal and constitutional rights to be informed legally of the charge against them.

G. W. Chamlee, J. R. Brodsky, Irving Schwab, Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 181] Brief and Citations of the Law in Support of the Above and Foregoing Assignments on the Petition to Rehear in This Cause

Point I

The venue should have been changed, as set out in assignmenr No. I of this petition to rehear, because the opibion of conditional affirmance of this Court is in direct conflict with the opinion and decision handed down in the case of Downer v. Dunnaway, United States Circuit Court of Appeals, 5th Circuit, in cause No. 6286 at Lew Orleans, Louisiana. Also it is in conflict with the decision of the case of Moore vs. Dempsey, 261 U. S. 86, and also because it is in conflict with the case of Thompson vs. State, 117 Ala. 67, and other cases cited in our original brief in the case of Ozie Powell, et al, vs. State of Alabama filed on the original hearing of this cause.

Point II

The Court erred in its conditional judgment of affirmance, because throughout this record there is disclosed a total disregard of the legal rights of these appellants to a fair and an impartial trial, and to fue process of law, as provided for in the Constitution of the United States.

Downer vs. Dunnaway, U. S. Circuit Court of Appeals, 5th Circuit (not yet published) in case No. 6289.

Moore v. Dempsey, 261 I. S. 86.

Point III

The Court erred in its conditional judgment of affirmance, because all negroes of Jackson County had been excluded from the jury box and no negroes were summoned for the grand jury that indicted the appellants, or on the trial jury which tried them.

Neal v. Delaware, 105 U. S. 370, 397;
Rogers v. Alabama, 192 U. S. 226;
Carter v. Texas, 177 U. S. 442;
Strander v. W. Va., 100 U. S. 303;
Gibson v. Miss., 162 U. S. 565;
Ex. P. Virginia, 100 U. S. 313;
Green v. State, 73 Ala. 26;
Roberson v. State, 65 Fla. 97;
State v. Peoples, 131 N. C. 784;
Boneparte v. State, 65 Fla. 97;
Montgomery v. State, 55 *a*Fla. 97.

[fol. 182]

Point IV

The indictment returned against the Appellants was illegal and void for the reason, "That general rule as to charging a purely statutory offense is subject to the qualification, declared to be fundamental in the law of procedure, that the accused must be apprised by the indictment, with reasonable *ca*rtainty of the nature of the accusation against him, so that he may prepare his defense and plead the judgment as a bar to a subsequent prosecution for the same offense."

United States v. Simmons, 96 U. S. 360, 24 L. Ed. 819;
Arizona—Earp v. State (Ariz.), 184 P. 942;
Arkansas—Glass v. State, 45 Ark. 173;
Holland v. State, 11 Ark. 214, 163 S. W. 781;
Florida—Edwards v. State, 62 Fla. 40, 56 So. 401;
Johnson vs. State, 58 Fla. 68, 50 So. 529;
Illinois—People v. Scatturn, 238 Ill. 313, 97 N. E. 332;
Kentucky—Commonwealth v. Cook, 13 B. Mon. 149;
State v. Jenkins (Mo. App.), 193 S. W. 604;
New Hampshire—State v. Peiroe, 43 N. H. 272;
New Jersey—State v. Kittredge, 86 N. J. L. 495;
State v. Nugent, 77 N. J. L. 157, 71 Arl. 481;
New York—People v. Taylor, 3 Dem. 91 Ses;
People v. Draper, 169 App. Div. 479, 154 N. Y. S. 1034;

Oregon—State v. Rosasco (Or.), 2-5 P. 290;
Texas—Portgood v. State, 29 Tex. 47, 95 A. M. Dec. 258; Kennedy v. State (Tex. Cr. App), 216 S. W. 1086;
Vermont—State v. Villa, 92 Vt. 121, A. 935;
"Joyce on Indictments, page 459."

When the statute creates the offense and defines it, it is sufficient if the indictment uses the words of the statute, unless the words be indefinite and vagie, ambiguous or general, in which case indictment must so particularize the act complained of that the party charged shall be in no doubt of the offense alleged against him. The certainty required is that which will enable him to plead the verdict in bar of any future action. U. S. v. Crosby, 25 Fed. Case No. 14, 893; 4 Cranch C. C. 517 Per Bond J.

And in a recent case in the United States Circuit Court of Appeals it is said that "where a crime is a statutory one, the indictment must set forth with clearness and certainty every essential element of which it is composed. It must portray the facts which the pleader claims constitute the alleged transgression so disrinctly as to advise the accused of the charge which he has to meet and to give him a fair opportunity to prepare his defense, so particularly as to enable him to avail hilself of a conviction or an acquittal in [fol. 183] defense of another prosecution for the same offense, and so clearly that the Court may be able to determine whether or not the facts there stated are sufficient to support a conviction."

Armour Packing Co. v. United States, 153 Fed. 116, citing Ledbetter v. U. S. 616, and other cases cited on page 545 of "Joyce on Indictments."

Point V

The Court erred in its conditional judgment of affirmance in this cause, because a new trial should be granted for the reason that members of the trial jury were not interrogated as to whether or not they bore racial prejudice against the appellants, and because of the presence of a mob at and about the Court House, and because of public demonstration prior to and during the trial, the appellants' rights were violated and the Constitution of the United States was violated, because under the Constitution it was provided that appellants should have a fair trial and be represented by counsel, and they did not have a fair trial because of the presence of a mob threatening and intimidating, and because of a parade and demonstration put on in and around the Court house at and before their trial rendered the judgment illegal and void and here refers to cases cited on pages 38 to 61 of the main briefs filed with this Honorable Court in this cause, the brief being styled Ozie Powell, et al, vs. State of Alabama, but they call to the attention of the Court the following cases:

Moore v. Dempsey, 261 U. S. 86;
Frank v. Mangrum, 237 U. S. 309;
Downer v. Dunnaway, U. S. Circuit Court of Appeals, Fifth Circuit, No. 6206 (not yet reported);
Seay v. State, 207 Ala. 453, 93 So. 403;
Holladay v. State, 100 So. (Ala.) 86;
Clayton v. State, 123 So. (Ala.) 250;
Collum v. State, 107 So. (Ala.) 35;
Bradley v. State, 21 Ala. App. 539;
110 So. 157 (affd. 215 Ala. 140);
Collier v. State, 115 Ga. 803;
State v. Wilson, 42 S. E. (N. C.) 556;
Hamilton v. State, 57 S. W. (tex.) 431;
Voughan v. State, 57 Ark. 1;
Douglas v. State, 152 So. 379;
Liggon v. State, 200 S. W. (tex.) 550;
State v. Weldon, 91 S. C. 29.

[fol. 184] We are confident that this Honorable Court misconstrued our assignments of error on the hearing of this cause and that the judgment of the Circuit Court of Jackson County should be reversed and a new trial granted and the venue changed to some other county and remanded for another trial.

Respectfully submitted.

George W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Schrieber, Attorneys for Appellants.

[fol. 185] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 320

HAYWOOD PATTERSON

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER OVERRULING PETITION FOR REHEARING—April 9, 1932

Application for rehearing having been filed in this cause on March 25th, 1932, and each and every ground of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and the application for rehearing be and the same is hereby overruled.

[fol. 186] IN SUPREME COURT OF ALABAMA

No. 320

HAYWOOD PATTERSON, Appellant,

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The petitioner, Haywood Patterson, Appellant, in the above styled cause most respectfully represents that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon this petitioner and fixing May 13, 1932, as the date for his execution, and that he filed his petition for a rehearing in this

Honorable Court, which was overruled and disallowed on April 9, 1932, and he desires to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon him to give him and his counsel time to comply with the legal requirements in the preparation and filing of his petition for certiorari in the Supreme Court of the United States at Washington, D. C., for the purpose of having his case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioner makes this application under the provisions of Section 8(d) of the Act of Congress of February 13, 1925, (U. S. Code, title 28, section 350), and in support thereof presents the following:

Your petitioner feeling himself aggrieved by the judgment of this Court and as he is advised by his attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 187] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioner of his life and liberty without due process of law and has denied to your petitioner the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioner although duly applied for compelling your petitioner to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioner of the charge against him with the certainty required.

(c) Your petitioner was denied an opportunity to employ counsel or to be properly represented by counsel and to prepare his case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioner his right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioner is advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 Subd. 1). Your petitioner is advised by his counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 188] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioner may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioner is advised by his attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioner respectfully asks this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 189] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioner, and your petitioner has been advised that it will take your petitioner and his counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioner respectfully asks this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioner respectfully submits that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Ozie Powell et al. vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the writ of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioner respectfully submits to this Honorable Court that a stay of execution is necessary in order to give your petitioner an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. *They* respectfully prays that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing of a petition for a writ of certiorari and pending the consideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Haywood Patterson, Petitioner, (Signed) by G. W. Chamlee, Atty. (Signed) G. W. Chamlee, Atty.

[fol. 190] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, Attorneys.

[fol. 191] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 320

HAYWOOD PATTERSON

vs.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause it is made to appear to the Court by petition that defendant (appellant) desires to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendant, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoner Haywood Patterson having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932 to June 24th, 1932. It is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendant Haywood Patterson to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of said Haywood Patterson until he is dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellant pay the costs of appeal of this Court and of the Circuit Court.

[fol. 192] IN SUPREME COURT OF ALABAMA

No. 320

HAYWOOD PATTERSON, Appellant,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court:

You are hereby requested to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of

1. The record on appeal in said cause, a copy of which we submit herewith.
2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith.
3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.

4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

5. The petition for a rehearing, copy of which we submit herewith.

6. The final judgment and decision of the Supreme Court of the State of Alabama.

7. The copy of this præcipe.

8. Your certificate to the record that it is a complete record in said cause.

Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

[fol. 193] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 100

CHARLEY WEEMS AND CLARENCE NORRIS,
PETITIONERS,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 23, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,797)

(   )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No.

CHARLEY WEEMS AND CLARENCE NORRIS,
PETITIONERS,

vs.

STATE OF ALABAMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF ALABAMA

INDEX

	Original	Print
Record from circuit court of Jackson County	1	1
Caption (omitted in printing)	1	
Indictment	1	1
Writ of arrest	1	2
Judgment entry	2	2
Bill of exceptions	3	3
Caption	3	3
Petition for change of venue	3	4
Exhibit "A"—Excerpt from newspaper	4	5
Exhibit "B"—Excerpts from newspapers	8	9
Testimony of M. L. Wann	15	18
Testimony of Joe Starnes	16	20
Order overruling petition for change of venue	18	22
Testimony of Victoria Price	18	22
Dr. R. R. Bridges	27	33
Dr. M. H. Lynch	31	37
Tom T. Rousseau	32	38
Jim Broadway	34	41
Ruby Bates	35	42
T. L. Dobbins	42	50
Lee Allen	43	50
Charley Weems	43	51
Clarence Norris	46	55

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 18, 1932

INDEX.

	Original	Print
Testimony of Arthur Woodall	50	58
Victoria Price (recalled)	50	59
Charge to jury	51	60
Motion for new trial	54	63
Amended motion for new trial	55	64
Exhibit—Excerpt from trial record	59	69
Petition of Claude Patterson et al	62	72
Affidavit of Haywood Patterson et al	67	77
Exhibit 1—Excerpt from trial record	73	85
Affidavit of Roberta Fearn	87	99
Bertha Lowe	88	100
Willie Crutcher	89	101
Allen Crutcher	90	102
Henry Cokley et al	91	103
Percy Hicks	92	105
Second amended motion for new trial	94	106
Testimony of T. G. Elkins	100	113
W. G. Sartin	102	115
L. R. Jones	103	117
J. M. Barnes	103	118
Willie J. Wells	104	118
Richard Hill	105	119
Roy Wilbourne	105	120
W. C. Scogin	106	120
B. M. Holloway	107	122
C. C. Allen	108	123
Lee Hicks	109	124
Luther Ballard	109	125
John Benson	110	125
Affidavit of T. B. Reynolds et al	111	127
L. L. Maynor	112	129
Clarence Norris	113	130
P. W. Campbell	118	135
M. L. Wann	120	137
M. C. Thomas	122	139
Charles F. Simmons	123	140
Houston Dicus et al	124	142
Order settling bill of exceptions	126	144
Certificate of appeal	126	144
Proceedings in supreme court of Alabama	127	145
Order for writ of certiorari	127	145
Writ of certiorari	129	146
Return to writ of certiorari	130	147
Argument and submission	134	151
Judgment	135	151
Opinion, Thomas, J	136	152
Petition for rehearing	153	164
Order overruling petition for rehearing	162	171
Petition for stay of execution	163	171
Order staying execution	168	175
Præcipe for transcript of record	170	176
Clerk's certificate (omitted in printing)	171	
Order allowing certiorari		179

[fol. 1] [Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS

INDICTMENT—Filed March 31, 1931

THE STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT, SPECIAL MARCH TERM, 1931

The Grand Jury of said County charge that before the finding of this Indictment, Haywood Patterson, Eugene Williams, Charlie Weems, alias Charles Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

H. G. Bailey, Solicitor for Ninth Judicial Circuit.

Circuit Court, Special March Term, 1931. The State vs. Haywood Patterson, et als. Indictment. Rape. No Prosecutor. Witnesses: Ruby Bates, Victoria Price, Arvell Gilly, Dr. R. R. Bridges, Dr. Linch, C. M. Latham, C. S. Broadway, C. F. Simmons, Tom Taylor Rousseau, Jim Broadway. A true bill. J. N. Ragsdale, Foreman Grand Jury.

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

WRIT OF ARREST

STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT

To any sheriff of the State of Alabama, Greeting:

An indictment having been found against Haywood Patterson et als., at the Special Session, 1931, of the Circuit Court of Jackson County, for the offense of Rape.

You are therefore commanded forthwith to arrest the said Haywood Patterson, et als., and commit them to jail, unless they give bail to answer such indictment at the said Circuit [fol. 2] Court of Jackson County, in the sum of — Dollars.

Witness my hand this 31 day of Mar., 1931.

C. A. Wann, Clerk.

Executed by arresting the within named defendants and committing them to jail. March 31, 1931.

M. L. Wann, Sheriff.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE

vs.

HAYWOOD PATTERSON et als.

JUDGMENT ENTRY

April 6, 1931, Comes H. G. Bailey, Solicitor, who prosecutes for the State of Alabama, in this behalf and also came Charlie Weems and Clarence Norris, indicted with Haywood Patterson, et als., and the said Charlie Weems and Clarence Norris demands a severance in this case and the same is granted and the defendants in open Court and by their attorneys of record file a motion for a change of venue and the same is overruled and the defendants except.

April 6, 1931, the said defendants being duly arraigned by having the indictment read over to them and for their plea thereto say they are not guilty: Issues then being joined there came a jury of good and lawful men, to-wit: John N. Coffey and eleven others who being empanneled and sworn, according to law, upon their oaths do say:

"We, the jury, find the defendants guilty as charged in the indictment and fix their punishment at death.

(Signed) John N. Coffey, Foreman.

And the said defendants the said Charlie Weems and Clarence Norris, being in open Court on the 9th day of April, 1931, and being asked by the Court if they had anything to say why the sentence of the law should not now be pronounced upon them, each of them separately and the said defendants say nothing. It is therefore considered by the Court and it is the judgment of the Court and the sentence of the law that the said defendants the said Charlie Weems and Clarence Norris be sentenced to death by electrocution at Kilby Prison in the City of Montgomery, Montgomery County, Alabama, on Friday the 10th day of July, 1931. Defendants appeal to Supreme Court and sentence suspended pending said appeal.

April 18, 1931, the Clerk of this Court did write death warrants for the said Charlie Weems and Clarence Norris and the same directed to the Warden of Kilby Prison commanding him to fail not in executing the said sentence and make his return as to how and when he executed the same.

[fol. 3] IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS

Bill of Exceptions—Filed Nov. 30, 1931

CAPTION

Be it remembered that upon the trial of the foregoing styled cause, in the Circuit Court of the Ninth Judicial Circuit of Alabama, beginning on, to-wit: the 6th day of April, 1931, present and presiding the Honorable A. E. Hawkins, Judge of said Court, the following proceedings not otherwise appearing of record, were had, to-wit:

On said 6th day of April, 1931, the defendants Charley Weems and Clarence Norris, filed in said cause their petition for a change of venue, said petition being also signed by other defendants, and a severance as to the defendants in this cause, to-wit: Charley Weems and Clarence Norris, was granted upon motion of the State. Said petition for change of venue is in words and figures as follows, to-wit:

Petition for Change of Venue

To the Hon. A. E. Hawkins, Judge of the 9th Judicial Circuit Court:

Your petitioners, the undersigned, who are defendants in a cause now pending in said court, charged with the offense of rape, respectfully represents that they nor either of them can have a fair and impartial trial in this county; that the newspapers published in this county have so persistently tried the cause asserting the guilt of the defendants in such terms of these defendants, as to inflame the public mind to the extent that the Sheriff of said county had the Governor of this state to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflam-atory statements contained in said newspapers which are circulated all over this county, the minds of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publication- are hereto attached, marked Exhibit- "A" and "B" and made part of this petition. That the public generally have already convicted them. Wherefore, petitioners prays your Honor to make an order removing this trial to some other county and the defendants hereby make oath that all the foregoing statements are true.

[fol. 4] Ozie (his X mark) Powell. Haywood (his X mark) Patterson. Eugene (his X mark) Williams. Charlie (his X mark) Weems. Roy (his X mark) Wright. Willie (his X mark) Roberson. Andy (his X mark) Wright. Alen (his X mark) Montgomery. Clarence (his X mark) Norris.

Sworn to and subscribed before me this the 6 day of April, 1931.

C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

Said Exhibit "A", attached to said petition, is in words and figures as follows:

Exhibit "A"

Jackson County Sentinel

Scottsboro, Ala., March 26, 1931.

Nine negro men rape two white girls, charge.

Threw white boys from freight train and held white girls prisoners until captured by posse.

All negroes positively identified by girls and one white boy who was held prisoner with pistol and knives while nine black fiends committed revolting crime.

National — called here and escorts prisoners to Gadsden for safe keeping until Tuesday.

Two girls and seven white boys were attacked by negroes as freight train left Stevenson; girls from Huntsville.

Case has no parallel in crime history. Assault took place in mid afternoon as freight train sped through this county. [fol. 5] Special term of Grand Jury and court called for next Monday and April 6th.

This afternoon (Thursday) eleven National Guard officers and seventy Guardsmen are on their way to Gadsden, Alabama, escorting nine negro men to jail at that city for safe keeping. Every one of the nine blacks is charged with raping one or both of two white girls they held prisoners on a fast through freight train as it was passing through Jackson County Wednesday afternoon between noon and three o'clock after they had attacked and thrown from the train six white boys and held one white boy a prisoner with pistol and knives.

The negroes have all been positively identified by the two girls and all of the white boys, all of whom are now in Scottsboro to await the convening of the Jackson County grand jury called for special term next Monday, March 30th, to investigate the case.

The girls were Victoria Price and Ruby Bates, who gave their ages as 17 and 19 years, and gave Huntsville as their home. They stated that they had been in Chattanooga looking for work and were broke and decided to hobo back home with the white boy companions. Both girls were garbed in overalls.

The names of the white boys were John Gleason, John Ferguson, Roy Thurman, Lindsay and Odell Gladwell, Lester Carter and Orville Gilley. All of these white men gave addresses in other states except Gilley, who stated his home was at Albertville in Marshall County. Gilley was the one held prisoner by the negroes and is an eye witness to every assault.

The negroes, as hard looking lot as ever marched into jail here, gave their names as Ozey Powell, Chas. Weems, Clarence Morris of Atlanta, Olen Montgomery of Monroe, Ga., and Roy and Andy Wright, Eugene Williams, Haywood Patterson of Chattanooga, and Willie Roberson of Columbus, Ga.

These last four negroes were identified by Chattanooga police as being "the worst young negroes in Chattanooga" and all of them have bad police records in that city.

Negroes Accuse Each Other

This morning one of the younger negroes was taken out by himself and he confessed to the whole matter but said "the others did it." He was taken back to point out the guilty ones and the negroes immediately began accusing each other of the crime.

Surprise Attack Overpowered Whites

According to the general story told by both the girls and [fol. 6] white boys, the two girls and seven white boys — in a gondola car (or coal car) which had about two feet of gravel in the bottom of it. They were beating their way to Huntsville from Chattanooga. When the fast freight pulled away from the coal chute west of Stevenson, the nine negroes and maybe one or two more jumped down in the car and attacked them, the negroes showing a pistol and knives. Several of the smaller white boys were bodily thrown over the gondola sides and the fight was soon left to only three or four white men and they fought until one by one of the black brutes overpowered them and threw them over the side of the car. One white boy, Orville Gilley, was struck over the head with a pistol and left in the corner for dead, but he roused up and found a knife held at his throat by two negroes who told him they intended to kill him. While some of the negroes held the two white girls, others of the fiends raped them, holding knives at their throats and beating them when they struggled.

Splendid Capture by Deputy and Posse

The first white boy thrown from the train struggled his way back to Stevenson and gave the alarm but the freight had already passed Scottsboro and word was flashed to Paint Rock, where Deputy Sheriff Latham of Trenton, who happened to be in Paint Rock, quickly formed a big posse of heavily armed citizens and they lined up on both sides of the railroad and stopped the train and got every negro brute as he dropped from the cars. The white girls were found in the car in a terrible condition mentally and physically after their unspeakable experience at the hands of the black brutes. They were hurried to Scottsboro and given medical attention.

The negroes were lined up at Paint Rock and Sheriff Wann and the posse brought all nine of them to Scottsboro where they were identified by the two girls and all of the white boys.

A great crowd gathered at the jail and it was thought that the prisoners were being carried to Huntsville for safe keeping, but the Sheriff changed his mind. Mayor Snodgrass and other local leaders addressed the threatening crowd and plead for peace and to let the law take its course and after an hour or two the crowd dispersed and all was quiet.

As a precautionary measure Governor Miller had been asked to send troops to Scottsboro and Major Joe Starnes of Guntersville, with ten other officers, commanding Alabama National Guard Companies E, F, G, arrived here within less than three hours' notice from the time his men [fol. 7] were called, establishing a splendid record for the Guard as to ability to "get there when called." However, all was quiet, the soldiers relieving the Sheriff and many of his deputies who had been on watch throughout the night.

Today it was decided to send the negroes to Gadsden and the National Guard will escort them to that city, also escort them back to Scottsboro for arraignment and trial.

Some of the white boys thrown from the train were badly beaten up and bruised and were given attention by local doctors.

Case Without Parallel in County

This crime, the news of which was flashed around the whole county as a "first" Associated Press story, stands without parallel in crime history. Nine Negroes charged with rape, all of them being seen by three white eye-witnesses in open daylight, and this heinous attack following an assault and attempt to murder on the seven white boys who tried to protect the girls.

Calm thinking citizens last night realized that while this was the most atrocious crime charged in this county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by legal process. The citizens and officers are also commending the citizens of Paint Rock for their splendid and courageous stand in helping uphold the law at a most trying time.

Special Term of Court Called for April 6th

Circuit Judge Alf E. Hawkins and Solicitor Bailey arrived in Scottsboro Thursday morning and immediately went in conference regarding a special term of the grand jury and circuit court.

The grand jury was summoned to reconvene next Monday, March 30th, and the Circuit Court to reconvene the Monday following, April 6th. County Court has been postponed to the first Monday in May.

All members of the present grand jury are given notice to please be at the court house next Monday morning, the convening of the jury at about 10 o'clock.

This jury consists of J. N. Ragsdale, foreman, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, Walter Berry.

According to legal procedure in a case of this grave nature it is necessary to allow certain time to elapse for legal procedure between the indictment and trial. Many citizens had hoped to get a speedier trial even than this date set, but under the law it is properly set and we feel sure that Jackson County people will accept this verdict [fol. 8] and be a part in keeping peace in this time when it is hard to be law-abiding.

Judge Hawkins and Solicitor Bailey have secured Judge Speake and Solicitor Pride of Madison County to hold their court at Guntersville week after next in order that they might give this early trial to these negroes.

Said Exhibit "B," attached to said petition, is in words and figures as follows, to-wit:

Exhibit "B"

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Negroes Indicted on Charge of Rape

Grand jury finds 20 indictments against blacks charged with rape of two white girls on train.

Negroes plead not guilty to most serious charges in legal history of this county.

Trial set for next Monday at Scottsboro; 100 jurors summoned to try case; troops form constant guard to alleged rapists.

Surrounded by a cordon of soldiers bristling with automatic rifles, pistols and riot guns, nine negro men stood up in the Jackson County court house last Tuesday morning and were indicted on the most serious charges known on the statute books of Alabama, rape. The negroes were Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, all of whom pled not guilty to the charges of having raped Victoria Price and Ruby Bates, two white girls.

Twenty Indictments Against Negroes

The Jackson County Grand Jury went into session last Monday morning investigating the case and Tuesday morning reported twenty indictments for rape against nine negroes. There were nine individual indictments against the negroes for the alleged rape of Victoria Price, nine against them for the alleged rape of Ruby Bates, and two indictments against the whole nine negroes collectively for the alleged rape of both Victoria Price and Ruby Bates. This placed three indictments against each negro for the al- [fol. 9] leged crime of Wednesday of last week when it is said these negroes attacked the two white girls after overpowering or throwing from a moving freight train seven white bous who were in the same car with the two white girls.

The grand jury, under the direction of Solicitor Bailey, and County Solicitor Thompson, called before it a number of witnesses, including the two girls, Victoria Price and Ruby Bates, whose homes are in Huntsville, the boys who were with them and thrown from the train, the boy who was held prisoner and alleged to have witnessed the entire assault, the doctors, several officers and others who had information on the case.

No Disorder at Arraignment

The negroes were brought to Scottsboro from the Gadsden jail where they had been carried Thursday of last week. They had an escort and guard to and in Scottsboro of Sheriff Wann and deputies and Major Joe Starnes of Guntersville in command of 25 picked soldiers from the Alabama National Guard. These soldiers were armed with automatic rifles, riot guns and pistols and kept order in the court room and kept "crowding" at a minimum. A great crowd of people was present or tried to get into the court room. However, the general temper of the public seems to be that the negroes will be given a fair and lawful trial in the courts and that the ends of justice can be met best in this manner, although these cases charged against the negroes appears to be the most revolting in the criminal records of our state, and certainly of our county.

Defense Lawyers Appointed

A Chattanooga lawyer, a Mr. Broddy, was at the court Tuesday, he said, "to investigate the case of the negroes for interested parties in Chattanooga, but said he at that time had not been employed as counsel to defend them at the trial. Judge Hawkins appointed the entire Scottsboro bar not otherwise excluded from the case, to act as temporary attorneys for negroes or active counsel for them if it appeared they would have no other counsel. Mr. Broddy also agreed to be listed as a temporary attorney for the defense. So at this time it is not known positively just who will defend the negroes and there may be outside legal talent from several places.

It is understood that the Scottsboro law firm of Proctor and Snodgrass has been retained to assist in the prosecution of the negroes.

Trial Set for Next Monday

The trial of the negroes is set for next Monday, April 6th, [fol. 10] in the special term of Jackson County Circuit Court. Judge Hawkins has drawn 100 regular and special jurors to appear for service. The list of jurors appears on this page of the Sentinel.

We are informed the State will make effort to try all the negroes at the same time under one indictment. If this is accomplished the matter will be made brief. If it becomes necessary to try each defendant separately it will take hundreds of jurors and many days court time.

100 Guards Here Next Monday

Major Starnes Will Command Picked Troops at Trial Next Monday.

Major Joe Starnes of the Alabama National Guard stated to the Sentinel Monday that he expected to bring at least one hundred picked men for escort and guard duty to Scottsboro on next Monday when the nine negroes charged with rape on two white girls are brought here from Gadsden to be tried in the Jackson County Circuit Court.

The units coming here will be from Guntersville, Albertville and Gadsden and will be officered by about eleven men. These troops will remain here during the duration of the trial at least.

Major Starnes and his men made a record answer to the emergency call that was sent to them last Wednesday night by the Governor of Alabama, arriving in full military equipment at the Scottsboro jail in less than three hours from the time the Major got orders to come to Scottsboro. It was in the night and his men had to be notified at their homes in many parts of Marshall and Etawah counties.

Jurors Drawn for Special Term of Court

The following is a list of regular jurors drawn to appear next Monday morning for service at the special term of Jackson County Circuit Court which will try the nine negroes indicted for rape:

A. H. Hill, Bridgeport, Lem. R. Jones, Bridgeport, Geo. R. Joyner, Bridgeport, J. M. Barnes, Bridgeport, Luther Hart, Bridgeport, L. M. White, Bridgeport, W. C. Lindsay, Stevenson, Luther Ballard, Stevenson, John St. Clair, Stevenson, John N. Coffey, Stevenson, Virgil Knight, Stevenson, Horace McCrary, Stevenson, A. L. Akins, Stevenson, G. C. Reeves, Bryant, James Walker, Fackler, Clay Shrader, Fackler, Albert Rash, Rash, James D. Allen, Rash, Lee Hicks, Olalee, Ed. Matthews, Olalee, Arthur Gamble, [fol. 11] Olalee, C. C. Allen, Olalee, A. L. Starkey, Hollywood, Wade S. Rowe, Pisgah, Will G. Sartin, Pisgah, Griff Callahan, Langston, Chas. Utter, Langston, T. Gaines Elkins, Tupelo, Steve J. Mitchell, Tupelo, Perry B. Hall, Larkinsville, J. B. Selby, Larkinsville, Pleas Kennamer, Woodville, Wm. Bishop, Woodville, P. W. Page, Woodville, Roy Wilbourn, Trenton, Richard Hill, Collins, Chas. Grady Swaim, Collins, Tom Austell, Collins, John W. Butler, Bishop, P. R. Sanders, Kyles Spring, O. C. Proctor, Scottsboro, Wm. McCutchen, Scottsboro, Tom W. Flowers, Scottsboro, L. D. Dean, Scottsboro, J. Exum Sumner, Scottsboro, John L. Staples, Scottsboro, J. W. Austell, Scottsboro, J. H. Harris, Section, J. A. Galloway, Section, McKinley Gilbreath, Section, J. A. Staten, Section, Granville Carter, Section, Luther B. Whitten, Section, J. A. McFarlin, Garth, J. A. Houk, Garth, J. G. Enochs, Hollytree, W. C. Scroggins, Dutton, Fred Morris, Dutton, Robert Hope, Dutton, Tom J. Dean, Dutton, Sam Dobbs, Dutton, T. M. Holloway, Dutton, Joe M. Kennamer, Gross Spring, Albert Britt, Haigwood, R. D. Bryant, Haigwood, John D. Culpepper, Haigwood, W. G. Isbell, Lim Rock, W. B. Clark, Princeton, J. F. Wilkins, Wininger, M. P. Adams, Rosalee, Alfred James, Deans, M. H. Moore, Deans, Eli L. Brown, Deans, J. E. Creswell, Deans, B. M. Bradley, Deans.

Special Jurors

The following is a list of 25 special jurors drawn tó supplement *to* regular list above of 75. According to law only 100 jurors can be summoned at one time and if more are needed during progress of Court the judge is empowered to [fol. 12] draw them as needed. The following jurors also reported next Monday morning:

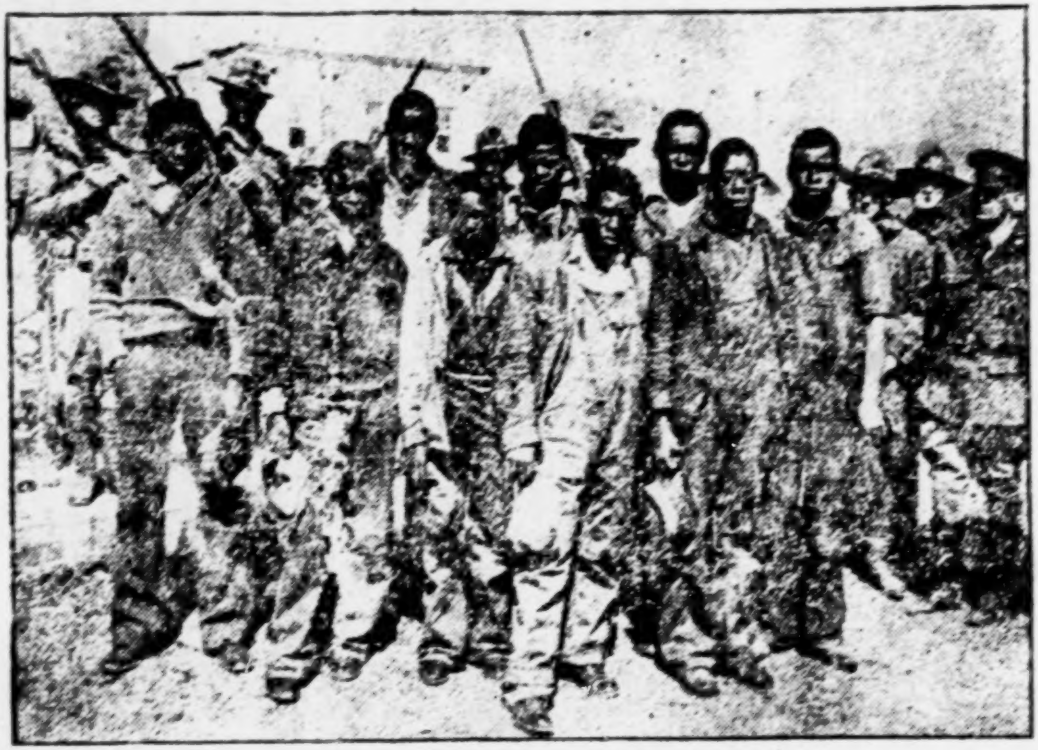
Wm. E. Moore, Pisgah, Mose Dawson, Scottsboro, John Strawn, Section, Joe L. Outlaw, Section, Marion Johnson, Lim Rock, Lee Golden, Princeton, W. Gordon Harris, Hollywood, Jno. L. Blevins, Stevenson, Wm. E. Glover, Lim Rock, Tom Shepard, Swaim, Willie J. Wells, Paint Rock, John N. Hatchett, Swaim, Geo. O. Cook, Paint Rock, Hub F. Everett, Paint Rock, Avery Steele, Olalee, J. Walter Clunn, Princeton, Tom Arnold, Pisgah, John W. Sumner, Scottsboro, Albert Hoge, Tupelo, Charles S. Sewell, Flat Rock, Lee Sahby, Maxwell, Jóe A. Ross, Woodville, Geo. R. Allison, Stevenson, Jesse C. Smith, Section.

(Here follows picture from Jackson County Sentinel, side folio 12)

JACKSON.COUNTY SENTINEL

SCOTTSBORO, ALA., APRIL 3, 1931.

ALLEGED NEGRO ATTACKERS AND THEIR VICTIMS



Pictured above are the nine negroes indicted on a charge of raping two white girls after they had thrown the white boy companions of the girls off a Southern freight train between Stevenson and Scottsboro Wednesday of last week. In the photo the negroes are seen guarded by soldiers with automatic rifles and riot guns.

Below is a photo of the two girls, Ruby Bates, 17, and Victoria Price, 20, who accuse the nine negroes of rape. These girls identified all of the negroes pictured above as attacking them.

[fol. 12½] **Jackson County Sentinel**

(Editorial)

Scottsboro, Ala., April 3, 1931.

The Case of the Negroes

The editor of the Sentinel is informed that the attorneys for the nine negroes being held for rape of two white girls on a train in Jackson County, last Thursday will petition for a "change of venue" under the claim that newspaper stories and other propaganda have made it impossible to get a fair and unprejudiced trial in Jackson County for the negroes.

This claim is without foundation at all. The citizenship of Jackson County just wants one thing—justice. They would want the same thing for white men charged with this offense just the same as they want it for the blacks. Under most trying circumstances our citizenship has acted fairly and, we believe, most wisely. If these negroes are guilty of the heinous crime of which they are charged they should get the severest penalty of the law, is our honest opinion. If they are not guilty, they are the most mistreated so far as charges are concerned, of any men ever arrested in this county. None of the parties, either negroes or white, are residents of Jackson County. Jackson County certainly gets no pleasure out of the matter.

But in justice to the Sentinel and the article it printed last week regarding the affair, we tried very hard to temper the story down to keep from inciting the people rather than to do so. There was testimony of the two girls that was entirely too revolting to go in any paper or even be made public property. If these stories are true, these nine negroes are all guilty and should pay. The negroes have offered nothing to refute these charges except their mumbled "not guilty" answers in the court Tuesday. It is their privilege and the privilege of their attorneys at the trials next week to prove these charges false if they can do so. The citizenry of this county and this state wants these negroes to have every opportunity to prove their innocence before a verdict is rendered. If they cannot prove innocence the law is expected to do its full duty.

Next Monday should be orderly in Scottsboro in every way. A tremendous crowd will be here, most of them out of curiosity. The town will have a hundred or more soldiers in it too. Everybody is urged to keep down any and all friction with the troops. They are nice, gentlemanly [fol. 13] young men from our neighboring counties who will carry out their every obligation to their state and country and are not sent here as "bullies" to intimidate citizens.

The Sentinel is not prejudiced. The nine negroes face the gravest charges ever docketed at one time in Jackson County or Alabama. The evidence against them is corroborated and witnessed. It hardly seems possible that all evidence can be broken down, but these negroes will be given every right of defense of their own liberties and lives. Jackson County lives by the law; it will accept the settlement of this matter by the law. But we just want the world to know that these negroes were not scooped up on vague charges and slammed in jail on a pretense of a rape charge. The editor of this paper heard and saw the two poor white girls identify and point out the negroes and heard and saw the white boys who were thrown from the train and the one who was held prisoner and witnessed, he said, the wholesale rape of these two helpless white women, identify and point out every one of the nine blacks, as parties to the rape and assault. This white boy was bruised and scratched, he said by the negroes choking and beating him. The Sentinel is not trying to convict the negroes without a trial—it just resents the insinuations on those who accuse our citizenry of being acting on race prejudice, when evidence and not prejudice is what is holding and indicting these negroes. We fail to see where a change of venue could benefit the negroes very much, if any. The testimony would be the same, and the witnesses are as well known elsewhere as in this county and court.

A Hideous Blot

(Chattanooga News)

How far has our vaunted Southern chivalry sunk when we must contemplate two young women being forced out into the world to find work, and when we review the fact that they were then forced to return home in overalls, stealing a ride in a gravel car on a freight train.

How far has humanity sunk when we must contemplate the frightful things which occurred in that gravel car.

How much farther apart than night and day are the nine men who perpetrated those frightful deeds and a normal kind-hearted man who guards his little family and toils through the day, going home to loved ones at night with a song in his heart.

[fol. 14] How is it possible that in the vesture of man can exist souls like those nine, while others in the vesture of man can dream such beauty as Keats dreamed, or can paint as did Raphael, or sing as Caruso, or play as Kreisler? The beast of the fields do not differ among their own kind as do men, who are either blessed or cursed with imagination.

The terrible story of the ride on that freight train between Chattanooga and Scottsboro was strangely depressing to all the South. It lay like a weight on the heart of those who read it.

The News urges the Alabama grand jury to return speedy indictments. We still have savages abroad in the land, it seems. Let us have the solace of knowing that at least we have arisen above the justice of savages.

Mob Violence Again Averted

(Montgomery Advertiser)

Sheriff Wann, of Jackson County, is a cool, sensible and determined officer of the law, the sort of man whose neighbors must have learned to respect before they had occasion to test his mettle. Otherwise those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls. But with nine deputies and one volunteer standing by his side the sheriff sent word to the impassioned men without that he would fight before surrendering the prisoners. They stood around a while—300 of them, say the dispatches—when the weather turned cold unexpectedly and to be comfortable they dispersed and went to their homes.

The circumstances were peculiarly trying. Some of the negroes have confessed that 12 of them attacked two white girls, two of the negroes having escaped capture. Ordinarily it would be next to impossible to restrain the mob spirit in such circumstances. But two factors entered into the success of Sheriff Wann in protecting his prisoners. The first is that the angry citizens without must have known that the Sheriff was in earnest. The second is the growth of anti-lynching sentiment in Alabama. Today mobs are more reasonable and tractable than they used to be, because it has been the policy of public officials, especially Governors, and the policy of newspapers, for many years to condemn mob action. Alabama Governors generally have been vigorous in their efforts to combat the mob spirit.

[fol. 15] Governor Miller acted promptly and in the best Alabama tradition in sending National Guardsmen to Scottsboro. This was a wise precautionary measure.

The courts are acting promptly in arranging for a grand jury investigation of the crime.

In other words, in the face of extreme provocation, Alabamians have again shown that they are willing to let the law have its way.

Defendant separately and severally offered in evidence, in support of their petition for change of venue, said Exhibits "A" and "B", separately and severally, and the same were accordingly admitted in evidence, separately and severally.

In support of said petition for change of venue, defendants separately and severally offered the following oral testimony:

M. L. Wann, having been duly sworn, testified as follows:

"My name is M. L. Wann. I am Sheriff of Jackson County, Alabama. To bring these defendants to Court to trial today I did call this National Guard unit to accompany the prisoners in court, although I did have a crowd here, I did not see any guns or anything like that and I did not hear any threats. I had this National Guard unit to accompany the prisoners to court when they were brought here

several days ago. As Sheriff of this county I deemed it necessary for the protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guard."

Cross-examination:

The Solicitor for the State propounded to the witness the following question:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Defendants separately and severally objected to the question on the ground that it is leading; on the further ground that it calls for a mental operation of the witness; on the further ground that it calls for a conclusion of the witness; on the further ground that it calls for an unauthorized conclusion of the witness; on the further ground that it calls for incompetent, irrelevant and immaterial testimony. The court overruled the objection, and to this ruling of the court defendants separately and severally [fol. 16] reserved an exception.

The witness answered: A. Yes, sir.

The witness testified further: It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment that I heard on the outside. I have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county that the sentiment is not any higher here than in any adjoining counties. I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial.

Redirect examination:

I have troops here right now to keep the crowd back from the court house, and there is a great throng around this court house right now that would come in if I did not have the troops; they are from different counties here today. I know there are lots of them; there are several from Madison, Marshall and DeKalb. There are hundreds of them around the court house at the present time. They are not allowed by the guards to come to the court house. That is the rule. At the time these prisoners were arrested and brought to this jail I estimated the crowd at around two hundred. Then I took precautions to protect them. I thought that was my duty as an officer. I think there are three or five units of the National Guard here, protecting these defendants at the present trial, if I understood Major Starnes. I have five units of the State militia here now.

JOE STARNES, having been duly sworn, testified as follows:

Direct examination:

I am Major Starnes, of the Alabama National Guard. I have one Hundred and seven enlisted men here protecting these defendants. There are five units of the National Guard represented. I have eleven officers. I have one hundred and seven enlisted men and some non-commissioned privates. Two companies accompanied these defendants to this court. Several days ago I had a picked group of [fol. 17] twenty-five enlisted men and two officers from two of my companies to bring these defendants over for arraignment. I received the call — the State adjutant General at Montgomery at nine o'clock P. M., on the evening that the attack occurred in the afternoon. On every occasion I have been in Scottsboro I have found a crowd of people gathered around, and at the present time I have issued orders to my men not to let any come in the court house or court house grounds with arms. That situation exists right now, and has existed not only today but under orders of the court on every appearance of the defendants. My units of the National Guard have protected these men and have been with them on every appearance they have made in this court house. Every time it has been necessary, and for the arraignment of the defendants, I have brought them here and have carried them away. After these men were arrested, I first brought them back on Tuesday of the past week, is my recollection, March 31st. I brought them back here for arraignment. We arrived here at 10:30 and left at 4:00 o'clock. I brought them at 10:30 in the morning and left at four in the afternoon and took them back to Gadsden, then I brought them back here and arrived at 5:15 o'clock this morning. I have had them here twice from Gadsden. I brought them here and carried them back.

Cross-examination:

I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have made here from Gadsden. In my trips over to Scottsboro in Jackson county and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants. I have seen a good deal of curiosity but no hostile demonstration. In my judgment, the crowd here was out of curiosity, and not as a hostile demonstration toward these defendants.

The foregoing is all the evidence offered on the hearing of said petition of defendants for a change of venue.

The court denied said petition for change of venue and dismissed the same, to which action of the court defendant reserved an exception. The court entered the following order denying and dismissing said petition.

[fol. 18] ORDER OVERRULING PETITION FOR CHANGE OF VENUE

"The petition for change of venue having been heard on this 6 day of April, 1931, before the Honorable A. E. Hawkins, Judge, presiding, on the evidence introduced in open court and the exhibits, the copy of the Jackson County Sentinel and the proof introduced for the defendants, and for the state, and the court being of opinion that said petition is not well taken, the same is overruled and disallowed. It is, therefore, ordered and is the judgment of the court that the defendant's petition for a change of venue in this cause be, and the same is, hereby dismissed. The defendants duly excepted to the action of the court in dismissing their petition for a change of venue."

Upon motion of the State, the court granted a severance as to the defendants in this case, to-wit: Charley Weems and Clarence Norris, and this case proceeded against said defendants. After a jury had been struck to try this case the following proceedings were had:

VICTORIA PRICE, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Victoria Price. I live at Huntsville, Alabama. I am twenty-one years old. I was before the grand jury at this term of the court here a few days ago. Before that on Wednesday, the 25th day of March of this year, I was on a freight train — through Jackson County. I got on that train at Chattanooga. Ruby Bates was with me on that train. There was someone else. I saw these two defendants, the two sitting right over there, on that train. The train was right this side of Stevenson in this county when I first saw them. The train was traveling from Chattanooga. These defendants, Charley Weems and Clarence Norris, were coming over the train when I first saw them. I was riding on a gondola car. That is a car with no top on it. It has sides on it. I was inside of that car. That car was loaded with chert or gravel. It was not full to the top with chert or gravel. It lacked two or three feet on each side being full. When I first saw these defendants they were coming over the top of the train; they were coming over the top of the box car next to the gondola, into the gondola which I was in. There were some other negroes with these defendants. Twelve of them, all negroes, came over the top of that car. I know which was the first one that got down into the car in which I was riding; it was one of these defendants, the one sitting right over there, Charley Weems. He had the pistol, a .45. He was the first one that jumped over in the car, and he said "unload." He had that pistol in his hand. Two of the others also had pistols. I don't think I saw Clarence Norris with a pistol. He did not have a pistol. When they came into the car I was in, Clarence Norris asked me if I was going to put out. The one [fol. 19] that had the gun picked me up in his arms and said he was going to throw me out of the gondola. He got me by the leg and by the ankle and slung me back in the gondola and picked me up like he was going to throw me out of it. Then Clarence Norris grabbed me and had sexual intercourse with me. His private parts penetrated my private parts on that occasion. He absolutely had intercourse with me there in that car. At the time, Norris was having intercourse with me the defendant Weems had a knife on my throat. He had one of his hands on my face and the other hand with his knife, so I could not holler. He would not let me raise up. I struggled, hollered and screamed. Some of the other defendants were standing around at that time. The little one, the smallest one, was holding my legs. That train stopped at Stevenson and in Paint Rock. It did not stop between Stevenson and Paint Rock. One of these defendants, Clarence Norris, pulled my overalls off me, and had intercourse with me. The other one helped him; he held me while the other one pulled my clothes off. He took my overalls off and pulled my step-ins off me, pulled them apart. I did not afterwards put my clothese on before I got to Paint Rock. My clothes were not on until I got there, until just before the train stopped; my clothes were not on good when it stopped. When the train stopped at Paint Rock, I was lying there and I got up and fastened my clothes on me and got up on the side of the gondola and climbed off and I liked one step of going to the ground, and I didn't remember anything for about an hour after I got off the car. That occurrence happened between Stevenson and Paint Rock, while the train was traveling, going fast, between those two points. I don't know about the territory I was in, but about ten minutes after we left Stevenson, they came over the car. There were twelve of them, and these defendants were among the twelve. There were seven white boys, all of whose names I could not call, were in this car when these negroes came over. They were in there before the negroes got in there. Ruby Bates was in there. There was no relative of her's along and no blood relative of mine along. There was not a boy traveling with me.

Cross-examination:

I got on that freight train at Chattanooga, Tennessee. Ruby Bates was with me when I boarded that freight train. She is single. I am single. I have been married. My husband and I are not divorced. I do not know where he is now. I have not seen him in nearly a year. He was in Huntsville when I last saw him. I live in Huntsville.

[fol. 20] Defendant's counsel thereupon propounded to the witness the following question:

Q. Did you leave him at Huntsville?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I married my husband the 18th of last December, a year ago. I have seen him once in a year. That was in Huntsville. I have not been keeping up with how many days ago that was. It has been about a month, not hardly a month, when I saw my husband last. He was leaving for New Orleans the last time I saw him. I have not seen him since and don't know where he is now. I don't reckon he is in Huntsville. My home is in Huntsville. I was not born and raised in Huntsville. I was born and raised near Fayetteville, Tenn.

Counsel for defendants thereupon propounded to the witness the following question:

Q. How long had you known your husband before you married him?

The State objected to the question, the court sustained the objection, and to this ruling of the court the defendants separately and severally reserved an exception.

The witness testified further:

I went to Chattanooga on Tuesday before I came back Wednesday. I just stayed up there one night. I went from Huntsville to Chattanooga. I stayed at Chattanooga that night on 7th Street at Mrs. Brochie's. I was with this young lady at that time. I was not dressed in overalls when I went to Chattanooga. I got them at home. We took off our dresses and put on overalls to keep from getting hurt. We intended to board the freight train. We went up there on a freight. We did not have any money. I went to Chattanooga for the purpose of getting a job and I looked for a job. I just stayed there one night. This lady I went to see took me over to every mill in Chattanooga. I got to Chattanooga when the freight went in there Tuesday night. I got in between seven and eight, about seven-thirty, at night. I left Chattanooga on the morning freight, the next morning. I went to every mill in Chattanooga and this girl went with me. Mrs. Brochie took me to these mills. She lives in Chattanooga on 7th Street. I went to Mrs. Brochie's because she was a friend of mine. Callie is her first name. She is married. I asked a boy where she lived and he said she lived on 7th Street. I don't know what boy that was. I met him on the sidewalk in Chattanooga. I don't know who he was. He was [fol. 21] not a friend of mine; well, one way he was, or he would not have told me where she lived. I had not know him before. I asked him did he know where Mrs. Callie Brochie lived and he said "Yes," and I said "Will you please tell me?" and he said "Yes, she lives on 7th Street." I went to Chattanooga on a freight, in a box car. I had on overalls when I went into Chattanooga, and so did the other girl. I ran up on this boy on the street and he said he knew Mrs. Callie Brochie. He did not take me out to the house. He told me she lived in the fourth house on 7th Street and I went to the fourth house. I don't know how many blocks that is off Market Street. I walked up to her place on 7th Street. I went three or four blocks. I did not go a mile from where I got off the box car to Mrs. Brochie's. I went four or five blocks. I did not count them. I walked, but I do not know what number. I don't know whether it was the 100 or the 200 block. I could not tell you whether I went east or west from Market Street. We left Mrs. Brochie's house between six and seven o'clock the next morning going to the mills. I left Chattanooga when the freight left there. I did not have a watch. It was between 11:30 and 12:00 or 12:30 o'clock. I visited two mills during the morning and got on the train between 11:30 and 12:00 or 12:30. I did not have on overalls when I went to apply for jobs. I had on a dress. I put on my overalls in Huntsville when I went to Chattanooga. I did not wear overalls during the time in Chattanooga. I had never been to Chattanooga before. I have never been to Scottsboro before. I was not in company with any white men on that trip. I saw some white boys. There were some white boys in that car box as we went up, but we did not talk to them. They were sitting in one end and we were in the other. There were not any white boys in the box car with us when we got on in Chattanooga. This woman I spent the night with in Chattanooga went to the depot with me. I went from the depot down where the train takes water. I did not get on any box car coming back out of Chattanooga. I got on an oil tank coming back to Stevenson, and from Stevenson to Paint Rock I was in a gondola. That is an open car. There was gravel in the bottom of it. I did not see any cement. In the lower end of the gondola we were in, there were seven white boys. We were in the oil tank when I first saw the white boys. One of them went with us from the oil tank down to the gondola and helped us in the gondola. We asked him to and he helped us. [fol. 22] They were sitting on the lower end and they came on down and got in and they were sitting in the lower end and Ruby Bates and I started to get out and we thought we would stay in there, and they started singing and one of the black boys came over. The colored boys told us to unload and I told them they did not have any business in there. All the negroes had knives and guns and things and they were drawing and slashing around there and a part of the white boys got out and a part were knocked off. The white boys did not have time to say anything to the colored boys. Twelve of the colored boys came into that gondola. All of them came over at the same time. I must have counted them or I wouldn't have known how many there were. I counted twelve negro boys as they came over the top of the car. I was not excited at that time. It did not scare me. I don't reckon there was any fight started between the white boys and the colored boys. The white boys and the colored boys did fight in the gondola, where we were. They were trying to defend us, trying to help us out. These colored boys came on over there and ordered the white boys out, saying they going to shoot. The white boys did not say anything. The colored boys came over and said "All you sons-of-bitches unload." The colored boy sitting there behind defendants' counsel said "unload." I don't know his name. Then he knocked one of the white boys in the head with a gun. Both of these boys here did not have guns. The one sitting there had a gun. I don't know his name. I know another colored boy had a gun but I cannot point him out. I said there were two guns, and I still say two guns. I don't know the name of the other one that had a gun. They must have pointed a gun at me. They hit me on the head with it. When they came over they were getting the white boys off first. They knocked two white boys in the head with guns, not with their fists. They must have hit them with the butt of the gun. I know that one yonder hit him with the butt of it because I seen him hit him with the butt of it, and when he jumped over in the gondola and grabbed me by the leg he threw me down in the gondola and put a knife against my face. There was one white boy on the car that seen the whole thing, and that is that Gilley boy. I surely know which one of the other negroes had a gun. I know his old mug. I don't know his name. Yonder he sits (indicating) right through yonder. I don't know his name, but I am pointing my fingers at him. I am sure about that. He had the gun in his hand. The other one that had a gun is sitting right there (indicating). Those guns were going so fast in there I could not tell whether there were only two that drew their guns on me. There were only two guns I seen and the rest had [fol. 23] pocket knives. Every one of the negroes had pocket knives. Every one of them had their knives open. I did not say they had their knives sticking at me. I said they had them in their hands. If they had wanted to cut me they could have. The other girl was standing right there with me. They made these white boys get out, all except one. They made them get out with the guns. Two of the boys jumped off the gondola, and the other jumped off; they made them get off. I just met the white boys on the train. A part of the white boys jumped off immediately when those negroes came over. A part of them were made to get off and the other two were knocked off. There were seven white boys, and one of them was left on the gondola and seen the whole thing through with. Two of the white boys fell off when the negroes knocked them in the head with pistols, immediately when they came over. One was lying down flat on his stomach and the negro walked up and hit him in the head and when he hit him in the head he said "Get off, you son-of-a-bitch." They left one white boy in that car because the train was going so fast that he thought it would kill him if he jumped off and he came back and they pressed a knife on his throat there in the corner, and he watched all of them do the work. These negroes made six of the white boys get off the train. The other one must not have gotten off because he didn't want to get killed. He wouldn't get off because he was young and he would have fallen if he had jumped off the train going at a high rate of speed. The others got off but they got skinned up pretty bad too. All seven white boys were on this train when it left Chattanooga. We were all on the same car. We had spoken a few words with the white boys, but that wasn't in no loving conversation. It was about ten minutes after we pulled out of Chattanooga when I first saw these negroes coming from the oil tank into the gondola. I don't know where these colored boys boarded the train. I don't recall that. I put on my overalls in Chattanooga. We had the overalls on over our dresses. I had a dress under my overalls. The other young lady and I did not carry the overalls. We wore them. I did not wear them while I was in Chattanooga. We carried them for the purpose of riding freight trains. When Thurman, the one that got knocked in the head, climbed out of the gondola and fell, he looked back and seen the one sitting behind defendants' counsel grab me by the leg and jerk me back in the gondola. He must have told me to take off my clothes. He didn't tell me to keep them on. He said "Are you going to put out?" and I said "No, sir, I am not," and he said "You will or die." I suppose I knew what he meant [fol. 24] when he asked me if I was going to put out. I told him "No, sir, I wasn't," and I said "I will die before I will," and when he threw me out of the car I commenced screaming and he put me back in there and stretched a knife on my face. There wasn't but one white boy in there and twelve negroes and I began to scream and they wouldn't let me scream; they kept a hand in my mouth. That one there (indicating) took my clothes off of me. It took two of them to take my clothes off and took three of them to ravish me, and they wouldn't have if they hadn't had knives and guns. The other negroes had the other girl that was with me, over there. I couldn't tell you who the other negroes were that ravished her at that time. I don't know the ones that was over there with her. I know those negroes were taking the other girl's clothes off, but I don't know their names. I don't know them for sure. I will not be positive about them. I know how many there were; she had three. I had six. Three of hers got away; I reckon they got away. I said there was six of her's, but three got away. There were six to me and three to her, and three of her's got away. It took three of them to hold me. I said one was holding my legs and the other had a knife to my throat while the other one ravished me. It took three of those negroes to hold me. I- took two to hold me while one had intercourse. The one sitting behind defendants' counsel took my overalls off. My step-ins were torn off. I did not say they were taken off. This negro boy tore them off. He held me while he took them off. Six of them had intercourse with me. The one sitting there (indicating) was the first one. I don't know the name of the next one. I suppose I know them when I see them. I can surely point out the next one. Yonder he sits, yonder (pointing). That boy had intercourse with me. The third one was the little bit of one; yonder he is (pointing). He held my legs while this one and that one ravished me and then he took my legs again. I just showed you the third one that had intercourse with me. Yonder sits the fourth one that had intercourse with me. I don't know his name. All I can do is point him out. That boy was the fourth. That one (indicating) is the fifth one that had intercourse with me. The sixth one, is sitting there behind defendants' counsel. He was the sixth one, the last one that ravished me. I didn't have a watch and I couldn't tell you how long it took for six of them to ravish me. I don't know how much time elapsed, but it seemed like two hours or three hours. They would not let me up between times, not even let me up to spit. I must have tried to spit. I had snuff in my mouth. They [fol. 25] did not all run away when they got through. They were in the gondola when the train stopped for Paint Rock. When one negro got through having intercourse, he just stood there. My body was not bare. I did not say anything about my body being bare. They left our dresses on; just took off our overalls and step-ins. I did not have on that dress I am now wearing. When one got through the other would step up and lay down with me. I don't reckon I scratched any of them or put any marks on any of them. I offered resistance. I fought back at them. I would try to get up and he would not let me. He would put that knife on my face. Just one boy had a knife on my throat all the time. One boy held the knife on my throat until he was the last one. That was the one sitting behind defendants' counsel. He was the last one that held the knife there while all six of them, including himself, had intercourse with me. He was the last one. As the rest of them finished they just stood around there and watched. When they got through with me they were still in there, telling us they were going to take us north and make us their women or kill us one and we told them then that they would kill us then; that we were getting off at Huntsville, and they said they would throw us in the river. Paint Rock is where I left the train. The first one I knew when I came to myself in Paint Rock was my girl friend Ruby. I reckon I was unconscious. I did not know anything. My back was bruised up and I was "chiked" and everything else. He knocked me to my knees, got me entirely down; he asked me to lay down; he threw me down. He must have had to throw me down. I know he did. My back was beaten up. The one that had the knife on me bruised me up. This other girl was on one end of the gondola and I was on the other, just within a few feet of each other. I don't know whether we were in about two feet of each other. I knew what was going on with her. This girl and I did not say anything to each other while this was going on. I could not talk. They would not let us talk. I said something to these boys. We begged them to quit and they wouldn't do it. I was begging them to quit. They did not beat me unconscious. I did not say they beat me unconscious. I was unconscious when I got off the train at Paint Rock. When I came to myself I was sitting in a store. I don't know who took me off. It was a grocery store. It was not a drug store. I know where I was taken from the grocery store and who took me. I was taken to the jail at Mr. Wann's here in Scottsboro, and I have been there ever since. I know who took me off the train. I took my-[fol. 26] self nearly off it and I fell the rest of the way. The officers did not come in this gondola and get me. I climbed up on the side of the gondola myself with Ruby's help and when I got to the last step I fell and when I came to myself, I was sitting in a store. When the train stopped, the colored boys jumped up from where we were and went to running toward the engine. The other girl and I got up and climbed upon the side of the gondola and seen what was going on. All of the people down there were catching those negroes. That was not on account of any complaint of mine. There was a man ran back to the store and called up down there and told them to stop the train. I was not told what the trouble was. I was not told nothing. I know it. I am not making up nothing or hiding nothing. I know it in my own mind and head. I have answered five times who came and got me off this train. I didn't say I was unconscious. I said I was unconscious after I got off the train on the next to the last step. I said I was brought to a store, a grocery store. You will have to find out who took me there. I became unconscious when I fell off the stirrup on the side of the gondola. I lost consciousness and don't know how I got to the store. I was taken to the jail from the store, and I have been in jail since.

Counsel for defendants then propounded to the witness the following question:

Were you ever in jail before?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I don't know any of the police officers in Chattanooga. I do not know the police matron in Chattanooga. This train, when they started this raping, was on the railroad track, about ten minutes after it left Stevenson. That is not where the first one ravished me; that is where they came over the train at that time. I don't know where I was when this raping started. I don't know anything about measuring the miles. I could not tell you that. I was riding. I know where the train was when the last one of the six completed the intercourse with me; it was about five minutes before the train stopped in Paint Rock; one of them negro boys had to make him get up. Neither one of these boys that ravished me had intercourse with me more than once; just once each. I have pointed out the six boys that had intercourse with me. I must have pointed out all six; it wasn't seven. I absolutely know each one [fol. 27] as they had intercourse with me; if I didn't I wouldn't say they did. I was not unconscious when they got through with me. I did not say I was unconscious. I did not say I was beaten up. I said I was bruised up a right smart. I was ravished to the point that I could not speak; you can call it what you please. I said I had never known the white boys until I got on the train with them. I have not been in trouble at all in Chattanooga. My clothes were not bloody. I wasn't cut up. I wasn't easy. I must have been hurting. I had a doctor to examine me. He did not tell me whether I was alright or not. I did not ask him whether anything was wrong.

Redirect examination:

The doctors made an examination of me after this affair there. I was at their office when they examined me, here in Scottsboro. That was just about an hour after this occurrence, an hour to an hour and a half after it happened. They brought me to the jail from Paint Rock.

Recross-examination:

The white boys had been in the gondola. I don't know how long they were on the train with us before I saw these negroes. I don't have no idea, but they were on the train in Chattanooga when we got on. There were seven of the white boys. The seven white boys were not with us girls. They were in the car with us, and these negroes came on the car when we got to Stevenson, or just after we had passed

Stevenson. There was a white boy in the gondola all the time the ravishing was going on. The negroes were only with us from ten minutes after the train left Stevenson until we got to Paint Rock, and all this ravishing was done. I was ravished by six different men, and that occurred by six different men from the time we left Stevenson until before we got to Paint Rock.

Dr. R. R. Bridges, a witness for the State, having been duly sworn, testified as follows:

I am a practicing physician in this county. I am a graduate of the medical school of Vanderbilt University.

At this point counsel for defendants stated to the court that he would admit the qualifications of the witness as a physician.

The witness testified further:

I know this witness that just left the stand, Victoria Price. On or about March 25th, last, here in Scottsboro, I made an examinaion of her person. She was at my office when I made that examination. It was about four o'clock or a bit after, I don't remember exactly. There was another physician present the County Health Officer, [fol. 28] Dr. Lynch. I found a few bruises on the body of Victoria Price, in the lower lumbar region, down about the top of the hips, and a few minor scratches on the left arm, I believe, one of the arms, just short scratches. I did not find any other bruises anywhere else on the body. I examined genital organs. There were no lacerations or tears; it did not show any bruises, but it showed the semen, the male germ. I got the semen out of the vagina. We just made a mop smear on a slide and put it under the microscope and examined it under the microscope. I found spermatozoa. That is the male germs. We made examination of the body for bruises and those things. We did not make any further vaginal examination. I could not say that the spermatozoa I found were alive; they were non-motile. In my judgment, from that examination, there had been an intercourse with a man. This was possibly a little after four o'clock. I did not find any recent lacerations. Victoria Price was not hysterical at all at that time, but she wanted to do a lot of talking. She made complaint to me about the treatment she had received. Ruby Bates was present at the time I made the examination. In my judgment as a physician, from the examination I made of the genital organs of Victoria Price, six men, one right after the other, could have had intercourse with her, without lacerations. That is possible.

Cross-examination:

We did not count the spermatozoa we found in the vagina of this woman. One time probably would run from one to three million. A male discharges about a dram to three drams, which is about two teaspoonfuls. A discharge from a male amounts to from one to two teaspoonsfuls. From the Price woman there were no spermatozoa in the vagina. We made a smear into the vagina cervix to obtain this. I found spermatozoa in her. The slides were covered with the sperm; you see they are very small. From each male there is from one to two teaspoonfuls. I could not count the spermatozoa I found. You see one time there is probably enough to impregnate two or three million women. We found some in the other girl. We found the spermine in the other girl. That carries the male germs. That is a secretion that comes with the spermatozoa. You have the urethra secretion that comes just before the spermatozoa. That comes from the male. We found spermatozoa in both of these girls; I would call it much in each one, a great amount; in one smear we would find eighteen to twenty in one field. I could not say that these germs were alive at [fol. 29] the time I found them. They were non-motile. We put them on a glass slide. I could not say how long they had been there, but they were non-motile at the time I found them there. The Price girl had a few little blue spots on the back down in the lower lumbar region. They were small. She was not lacerated at all. She was not bloody, neither was the other girl. None was bleeding. The discoloration I speak of was very small. The girls were not hysterical at the office on that examination. I saw them the following morning at the jail for further examination and they were crying and nervous about it. They did not have anything to say about the white boys other than they were put off. There were no lacerations of recent date about the vagina of either of the girls; there were lacerations of old duration.

Counsel for defendants thereupon propounded to the witness the following question:

Both of these girls admitted to you they had had sexual intercourse previous to this, didn't they?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Counsel for defendants propounded to the witness the following question:

Q. Both of them told you they had had sexual intercourse, one told you she had been married and the other told you she had been——

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Counsel for defendants then propounded to the witness the following question:

Q. From your examination, could you tell whether or not they were subject to intercourse? Were they virgins?

The State objected to this question, the court sustained the objections and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

The Bates girl was bruised about the vagina. At the lower end of the vagina on either side in the groin there were two blue places, one on each side, about the size of a nickel, or a little larger, probably. I could not say that intercourse caused that.

Counsel for defendants then propounded to the witness [fol. 30] the following question:

Did you find anything in the vagina that indicated to you these girls had had or might have had gonorrhea or syphillis?

The State objected to this question, the court sustained the objection, and to this ruling of the court the defendants separately and severally reserved an exception.

Counsel for defendants propounded to the witness the following questions:

Do you know whether or not these girls had gonorrhea or syphillis?

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

They were not lacerated. They were not bleeding and not hysterical in the afternoon when I saw them.

Redirect examination:

I found marks on the throat of one of them. Mrs. Price if I remember, had a blue place along here (indicating) on the throat. It appeared to be bruised. It was discolored.

Recross-examination:

These girls were not torn and were not bleeding. The lips of one was swollen a bit, I don't remember which.

Redirect examination:

I examined Mrs. Price's breast only by inspection. I don't remember picking it up and palpating it. I did not see anything by looking at it.

Recross-examination:

Counsel for defendants propounded to the witness the following question:

Q. Did these girls admit to you they had been in the habit of having sexual intercourses?

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Counsel for defendants then propounded to the witness the following question:

Q. Did this particular one (Victoria Price) or either one of them tell you they were subject to sexual intercourse?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

[fol. 31] The witness testified further:

Mrs. Price stated to me she had been married twice and knew no other man but her husband.

Counsel for defendants thereupon propounded to the witness the following question:

Q. Did the other girl make a statement to you about whether she had ever had sexual intercourse before?

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Dr. M. H. Lynch, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I am a practicing physician.

At this point counsel for defendants admitted the qualifications of the witness as a physician.

The witness testified further:

I am head of the health department of Jackson County, Alabama. I know Victoria Price. I was present and made with Dr. Bridges an examination of her person along about March 25th. We took her from the jail to Dr. Bridges' office. We found on Victoria Price the next morning some bruises and scratches on the body. Those bruises on Victoria Price were on the left wrist and the left arm and in the small of her back. We did not examine them for bruises that afternoon; it was the following morning. I made an examination of her vaginal organs. I found no tears or bruises on the vagina of Victoria Price at that time. We took a smear from the vagina and examined that and found male spermine present, under the microscope. We only got enough semen out of the vagina to make a smear.

I have no idea of the spermatozoa that was in there. There was no comparison with the two. There was more in Ruby Bates than there was in Victoria Price. On Victoria Price we had to take a smear from the vaginal walls, but in Ruby Bates there was, I guess, probably two spoonsful in the vaginal canal. In my judgment as a physician, from my examination made on Victoria Price, she had had sexual intercourse with some male. It would not hardly be possible to tell how long before that. I could not at all tell the difference in the spermatozoa of a negro and a white man.

Cross-examination:

I would not undertake to say whether these girls had had sexual intercourse immediately after coming out of Chattanooga or after getting down to Paint Rock. I have [fol. 32] no idea how many men had intercourse with these girls. I have no idea about the amount of spermatozoa found in the vagina of these women only to the extent that there was more in one than in the other. I could not tell whether or not the girls had syphilis or gonorrhea. The girls talked with me about the case. They were not hysterical. There were only scratches and bruises on the backs of these girls. On the arms they were slight and on the neck prominent. One man could have brought about the bruises on the back having intercourse. There was nothing to indicate to me that they were beaten unconscious or into insensibility. The vagina was in good condition on both of the girls. There was nothing to indicate any violence about the vagina.

Tom Taylor Rousseau, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Tom Taylor Rosseau. I live at Paint Rock. I was present about the 25th of March of this year, in Paint Rock, when the defendants, including these two, were arrested and taken in custody on a freight train or near a freight train. That was along about the 25th of March of this year. It was some time right after dinner, a little after dinner, that that freight train got to Paint Rock. I saw those defendants over there on or about that train when it stopped. The first time I saw the negroes—of course, I was not close to them enough to recognize their faces—coming out of a sand car. That is the same thing as a gondola car. We took off nine negroes, coming out of a gondola car. I imagine all came off there. That is all I could see. I identify them now. I think I can point out every one of them. I see them over there. I saw these girls, Victoria Price and Ruby Bates in the back end of the car, the same car the negroes came out of. I did not observe the condition of the girls right at that time, until after we removed the negroes from the train, and they all left the train. As the train comes in sight it comes around a curve and runs under a coal chute and was taking on coal when we first went to take them off, and while we were taking them off I noticed one of the girls—I don't know which one it was—raise up out of the car—at that time I didn't know which one it was in there—I seen the girl raise up and go back down and I did not pay any attention to her at all until after we got the negroes off and a white boy came running up. That is all I saw at that time. [fol. 33] I did not see the girls get off the car. I saw Victoria Price a little later. When I saw her at that time they were coming around the depot with her in a chair. She had her eyes closed and was lying over this way and they were bringing her from the depot up to town to the doctor's office. That was Victoria Price. I saw her later one time from where I was at. She was still in the chair. I did not go down to where she was at. She was still in the chair. I did not go down to where she was at. I am familiar with the distance in Jackson County along this railroad. I know where Stevenson, Alabama, is. From Stevenson to Paint Rock, I imagine to be somewhere a little better than sixty miles, somewhere along there. From Stevenson to Paint Rock is in Jackson County along the right-of-way of this railroad.

Cross-examination:

I clerk in the store for my father at Paint Rock. I did not testify that I was on this train. I was just down there at the station when the train came in. What attracted my attention to this affair is that we were notified over the wire to take them off the train. That is all we knew at that time. I was not notified, but the deputy sheriff was, there. I am not a deputy sheriff. I just went down when I heard about it. The negroes were on the train when they were taken off. The bunch we removed, me and them other fellows, there was seven of them came out of that gondola, came out over the top of the train going toward the engine and I was standing next to the tender of the engine and there was four came off the car right below; there was a coal car next to the tender and there was four came off before they got on the coal car and another got on the coal car and came down it and another one went over on the coal car and was up in the middle of it and I kept to get him to come off and he was down in the middle of it on his hands and knees trying to do something and I told him to come off. I told him if he did not come off, I would kill him. He did come off. I saw some white boys there. There were four there. They come running up. They were not on the same car with the negroes. They came up the track. I did not see them on the train at all. The girls had on their overalls. I did not notice whether a part of the overalls was off them, so I don't know. One of the girls was not in condition to walk. I did not help carry her off. There was an officer toted the girl up there. They toted her off the train, a fellow named M. A. Mize. He had to carry her away from the train, unconscious. I don't know about what the doctor said about her not being un- [fol. 34] conscious at that time. I was not there. I was there at the time the girl was taken off.

Counsel for defendants thereupon propounded to the witness the following question:

Q. And if he (the doctor) testified immediately after their arrival here or at Paint Rock she was not unconscious, he is mistaken about it?

The State objects to the question, the court sustained the objection, and to the ruling of the court defendants separately and severally reserve an exception.

Jim Broadway, a witness for the State, having been duly sworn, testified as follows:

I was out at Paint Rock when those two defendants, among others, were taken off this train. I saw them on the train. I saw Victoria Price there. We got her off the freight train. She was on one of these gravel cars. That is known as a gondola car. There was another woman with her, the Bates girl. The Bates girl seemed to be in fairly good shape, but the other could not hardly talk and couldn't walk.

The solicitor for the State thereupon propounded to the witness the following question:

Q. Did you hear them make any complaint there, either one of these girls, of the treatment they had received at the hands of these negroes?

Defendants separately and severally objected to the question on the ground that it calls for incompetent, irrelevant, immaterial and illegal testimony, on the further grounds that it calls for hearsay testimony.

The Court stated, "I will confine it to Victoria Price."

Defendants separately and severally objected to the witness testifying as to what Victoria Price said, on the ground that it calls for irrelevant, immaterial, incompetent and illegal testimony, and on the further ground that it calls for hearsay testimony. The court overruled the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I did not hear Victoria Price make any complaint, either to me or anybody else there, about the treatment she had received at the hands of these defendants over there. We sent and got a chair for Victoria Price and carried her to [fol. 35] the doctor's office at Paint Rock.

Cross-examination:

I am not an officer. I was on my way to Huntsville and I saw quite a bit of excitement going on there, and I stopped and they asked me if I would help take those negroes off the train.

Ruby Bates, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Ruby Bates. I live at Huntsville. Along about March 25th, of this year, I was in company with Victoria Price on a freight train traveling from toward Chattanooga to Paint Rock, Alabama. After the train left Stevenson, I saw those negroes, those defendants sitting over there by the side of defendants' counsel, on the train.

The Solicitor for the State thereupon propounded to the witness the following question:

Q. You say you saw those two defendants on the train?

Defendants separately and severally objected to the question in the form stated and pointing to the defendants by the Solicitor, on the ground that it calls for incompetent, irrelevant, immaterial and illegal testimony, on the further ground that it is leading; the court overruled the objection, and to this ruling of the court defendants separately and severally reserved an exception.
The witness answered:

A. Yes, sir.

The witness testified further:

I say I saw them. When I first saw them they came over the top of the box car. When I saw them coming over the top of the box car they had guns and they told the white boys to unload. Then one of them hit one of the white boys in the head with a pistol. That one on the left hand side was the one that hit the white boy in the head with the pistol. Then some of the white boys began to get off the gondola, and allof the white boys gotoff but one. After the white boys got off, the colored boys throwed us down in the car. The one on my left hand side had a gun.

Cross-examination:

I had a talk with a doctor. I recall that I told the doctor. I have never been married. I had a conversation with the doctor about having sexual intercourse. I am talking about the doctor after I arrived at Scottsboro. I do not remember his name. He was the doctor that examined me at [fol. 36] Bridgeport. I just told him to examine me and see if he could find anything wrong with me. I told him about those negroes.

Counsel for defendants thereupon propounded to the witness the following question:

Q. No, not about the negroes, but did you tell him you had had intercourse before?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I told the doctor I had had sexual intercourse. I had on my overalls when I got off the train at Scottsboro. I knew what was going in when I got off the train at Scottsboro. I knew what was happening. I knew there had been a fight between the colored boys and the white boys. I arrived at Chattanooga Tuesday afternoon. I was at Huntsville before I started to Chattanooga. I saw some white boys on the way from Huntsville to Chattanooga. There were several white boys on there. I could not tell you where the white boys got off the train at Chattanooga. I know where I got off the train. I got off in the yards, in the railroad yards in Chattanooga. I could not tell you whether the white boys were still on the train when the other girl and I got off. We got off first at Chattanooga. We went to Mrs. Brochie's when we got off in Chattanooga. Mrs. Brochie lived on 7th Street. I could not tell you how far that is from Market Street, for I had not been there before. I do not know whether it is one block off Market Street or two blocks or how far it was. We did not ride a street car. We walked. I do not know where Georgia Avenue is. We went to 7th Street. This woman had a two story frame house. She kept boarders. We did not pay her for staying there. She was a friend of this girl I was with. I have no idea how far off Market Street it was, the number of the house, or anything. I don't know whether she was married. I didn't ask her any questions myself. We stayed all night. The other girl and I occupied the same room there. The next morning we got up and went to the mill. Mrs. Brochie went with us, the woman that ran the boarding house. We visited just one mill. That was the Thatcher Company Mill. I could not tell you where the Thatcher Company mill is. This woman that ran the boarding house went with us. We left Chattanooga at 11:45.

[fol. 37] The woman did not go down to the railroad yard with me to catch the freight train. I told this woman I was going to catch a freight train out of Chattanooga. I had on my overalls when I left Chattanooga. I did not wear my overalls when I visited this mill. I just had on my dress. We put on the overalls just before we left Mrs. Brochie's. I wore both my overalls and my dress, my overalls on over my dress. That was my first trip riding freight trains. I left Chattanooga at 11:45. The white boys were not on the freight train when I got on. I first saw the white boys after we got on the oil tank; some of them got on there. They were not the same white boys that rode from Huntsville over to Chattanooga. I did not know they were going to be on there. I did not know these white boys were going to be in that train. I had never seen these white boys before. They were not the same boys that came over with us the day before. I did not talk with them after I saw them on the train. I did not have any talk with them. I did not have any talk with them after I got down in the gondola. They got in one end of the gondola and we were in the other end and they were singing. I got in the gondola car. I did not get in where these boys were. We got in the gondola before they did, then they came in there. I did not talk with them, didn't say a word. I had not said a word to these white boys when I saw the negroes coming over. Nothing had been said between either me or my companion to the white boys. They were in one end of the car and we were in the other, sitting perfectly quiet, no sort of conversation, just sat there looking at each other. When I saw the negroes coming, one of the white boys looked up over the car and said "Look coming yonder," and we all looked up then, and they told the white boys to unload and the white boys still hadn't said nothing to us. There was one white boy out of seven left on the train. I do not know the names of any of the white boys. I could not tell you why they left this one. He stayed on in that gondola car. The negroes hit him but they did not put him off.

Counsel for defendants then propounded to the witness the following question:

Q. They could have put him off just like they did the rest of them, there wasn't any reason for not putting him off, was there?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

[fol. 38] The witness testified further: They left him on the train. I could not tell you whether he was any older or bigger than the rest of them. They were all grown. The white boys and the negroes fought considerably in this car. This other girl and I saw the beginning of this fight. I did hear everything that was said. I was sitting right there and it all went on right before me. Not all of the white boys and negroes were fighting. The two biggest white boys were fighting. I could not tell you which negroes fought them. All of the negroes came over at the same time; didn't but two come over at first; two of them stepped down in the gondola and the rest followed them. The rest of the negroes came right behind the two in the gondola car. There was a little lapse of time, and the fighting had already started before the rest of the negroes came over. There was pretty much of a fight between those negro boys and the white boys. The other negroes came down there and they all got into it. All the colored boys were fighting. Some of the white boys began to get off the car when they told them to unload. Some of the white boys ran. Those white boys that were not fighting were the ones that ran away. There were two guns; just two guns were used. Two colored boys had guns. The white boys did not have any guns. When the fight started, the train was just this side of Stevenson. That is when the negroes came over. I do not know approximately how many minutes I had been out of Stevenson; I don't know how long it was. We were right around ten minutes out of Stevenson when that started. I had not been bothered at all up to that time and hadn't any conversation with the white boys; had not even spoken to the white boys; this girl with me had not spoken to the white boys. They were all sitting in one end of the car and we girls were in the other end, and not a word said between us; hadn't even recognized them in any sort of way. The negroes came over then in that gondola car and started a fight and some of the white boys jumped off the train. Two of the white boys fought with the negroes and the rest of the white boys jumped off and left the train except one, and one stayed on the train. All of them ran away and just left one white boy in there. I could not tell you how much time elapsed while these negroes were ravishing me. I do not know how far it is from Stevenson to Paint Rock. I don't know how long it took; don't have any idea. This other girl, my companion, was in one side of the gondola and I was in the other. I was not in one end and she in the other; we were just side and side there in one end. This white boy was in the other [fol. 39] end while that was going on. That is where he was before the fight started. My overalls were taken off. They were on when I got to Paint Rock. I had a dress on under my overalls. The colored boys had a knife during the fight between the white boys and the negroes. I could not tell you how many knives the colored boys had. The other colored boys drew knives. I do not know which one it was. He held the knife on this girl. The same boy did not hold the knife on both girls. There were two of them that held knives on us. It was one of those great long knives. Both had knives just alike. The knives had long handles and long blades. The negroes that held the knives were not the same ones that held the pistols. I know the negroes that held the pistol. I don't know whether I know the ones that held the knives. The negro held the knife on me while I was having sexual intercourse. They held the pistol at the same time. The negro that held the knife on me held the pistol on me while this other girl and I were having sexual intercourse with them. He just held the knife against my throat. I could not feel the blade. He held that across my throat while I was having sexual intercourse, and another negro held a gun on me. There were three negroes to each girl, one for intercourse and one for holding the knife and one for holding the pistol. They never did remove the knife or pistol. While six men had intercourse with me they stood there with a knife and pistol on me. They put the knife and pistol up after this was over. I could not tell you how long they stood there with the knife and pistol drawn on me. I don't have any idea about how long it was. I remember getting off the train. Someone did not come on the train and get me off. I just got off the train. I voluntarily told the officers. After I got to Paint Rock, I told them there had been a fight on there between the negroes and the white boys. After I got off at Paint Rock, I told the people there had been a fight between the negroes and white boys. I had on my overalls at that time. They did not take me to a hospital. I was all right when I got off the train. I am seventeen years old. I have been working a year and over. My home is at Huntsville. I was not born and raised there. I have never been married. I have never lived in Chattanooga. That was my first time in Chattanooga. I have never been to Birmingham. I have never been away from home before. I have been knowing this girl that was with me a little over a year. I have never been out on trips before. We had never been with each other on trips. I had never ridden a freight train before. This was the first time.

[fol. 40] Redirect examination:

After I got off at Paint Rock I told those men there had been a fight between the colored boys and the white boys and they had thrown some off the car and some got off and I did not know whether they were hurt or killed or what, and they told that some of the boys had called up from Stevenson to stop the train there and get us girls off. I told them something else about what happened in the car. I told them the negroes had ravished us.

Recross-examination:

The boys put up the pistols and the knives just before the train stopped at Paint Rock. They did not put them up until the other boys were through with having intercourse with us. They sat there until the last one had, just one after the other. No boy had intercourse with me over once. Just before the train got to Paint Rock, they put up the knives and pistols. They had their knives and pistols on them when they stopped the train at Paint Rock. I put my overalls back on then. I put my overalls on and helped the other girl put hers on. Both of us climbed off the gondola. I was pretty much alarmed about this fight between the negro boys and the white boys. I had traveled with the white boys from Gadsden to Chattanooga, that is, there were white boys on the train, and also from Chattanooga down to Paint Rock. I was very much alarmed about the white boys when the fight started between the white boys and negroes. I was excited and worked up over it. I did not know whether the white boys had been killed or not when they took me off the train. My mother lives at Huntsville. I don't know where my father lives. I don't know about my father. I intended getting off the train at Huntsville. I was going back down to Huntsville

Redirect examination:

When I went from Huntsville to Chattanooga there were none of these white boys along with me. I first saw these white boys that had the fight with the negroes when they got on the oil tank after the train pulled out of Chattanooga. There was nobody along with Victoria Price and myself when we went to Chattanooga; just we two girls. I saw some boys on the train, but they were not the same boys that came back. I was not acquainted with the boys that went up with us. They just happened to be on the train. These boys that went up with us were not on the train with either Victoria Price or myself.

[fol. 41] LUTHER MORRIS, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama, in this County. Along about the 25th of March, when it is said these defendants were taken off a freight train at Paint Rock, I was about a mile and a half this side of Stevenson that day. I saw a freight train coming toward Scottsboro.

I observed it between twelve and one o'clock. I was on the place at home. I own land on each side of the railroad. I was up in the barn loft. I was about thirty yards away when the train past. I saw a bunch of negroes put off five white men and take charge of two girls. I saw between eight and ten negroes, and they put five white men off the train, made them get off the train. They did not throw them off; they just overpowered them and made them get off. I saw five white men get off that train along there. I did not hear any pistol shots. The train was making so much racket, I could not hear. I figure that the train was making between thirty-five and forty miles an hour. I saw those white men get off or fall off the train. I guess I observed that and could see that train there for about four hundred yards. I was there in thirty yards of the track. The kind of car on the train they were getting off was a coal car, or gravel car, you might call it.

Cross-examination:

I could hear the racket and the fight between the white boys and the negroes. The white boys were not yelling and screaming. The negroes did not make any noise; they were just putting the boys off; they were making them get off, making them jump off. There were five white boys they put off there; that is all I saw. From where I was standing, I figure there was between eight and ten negro boys, the best I could say. I saw two women in the gondola, two white girls. The two white girls were doing their best to jump and the negroes caught these two white girls and they were pulled back down in the car. I was standing above this train so I could get a good view. I saw all of this going on. I don't know exactly how far I was from Paint Rock. It is eighteen miles to Stevenson and I live a mile and a half of Stevenson.

Redirect examination:

I was in the barn loft and could see from the barn loft. I went out to where these boys were, the two that got knocked in the head, but they were hurting so bad they [fol. 42] could not talk. They just said "I am dying." I certainly did notice wounds or bruises about them; one looked like along here somewhere and another one right along in the forehead. They ran off and left me. They would not talk with me. They ran back to Stevenson. I saw five after the train passed. They were not all hurt or bruised; there were only two that I saw hurt.

Recross-examination:

These boys were hurting so bad they would not talk with me; they went on to Stevenson. They went afoot. They were badly hurt. It was a mile and a half to Stevenson. They went on and would not talk to me. All I know about this is what I saw from my loft, looking over in that gondola car, and I think I saw a plenty.

T. L. **Dobbins**, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live up this side of Stevenson. I live right on the Southern Railroad. I saw the negroes passing by the day it is said some negroes were taken off the train at Paint Rock, going toward Huntsville. I reckon it was between eleven and twelve o'clock or between twelve and one o'clock, when I saw the train pass by up there. I was in the house when it passed, maybe thirty or forty steps from the track. In the house I could not see more than fifty yards up and down the track, but on the porch I can see a quarter of a mile. I was in the house. I did not see anybody get off the train. As well as I recollect, there were three darkies in a box car, standing in the door, in front of this gondola where these' people were scuffling. A boy of mine called attention and hollered at me and as I came to the door, I saw them scuffling and it ran in behind the barn from the door from me. They looked like negroes to me, that I saw scuffling. They were in this gondola where they were scuffling.

Cross-examination:

I live at Stevenson. All I saw was just some scuffling between some men there. I did not see any guns. That was right this side of Stevenson, about a mile and a half or two miles. I just saw some negroes fighting in a gondola car. I could not tell what they were doing. I thought [fol. 43] maybe it was the brakeman trying to put them off. All I know about it is that it looked like there was a sort of a fight going on.

Lee Allen, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, I was along the right-of-way of the Southern Railway on the day it is said the negroes were taken off a freight train near Paint Rock, the train going toward Huntsville. On that day I was up this side of Stevenson when the freight train passed going toward Huntsville. It was along about 12:30 or one o'clock. I was about two hundred yards from the track. As the train went by I saw a bunch of people in a car. They were negroes; they were all of them in the car. I saw them striking this way (illustrating) and about that time I saw someone go out over the top of the car, on the other side of the car from me. That was a coal car, commonly called a gondola car. After the train passed, I saw two men coming back up the track. They were white men, with blood running down their faces. They were walking along the railroad then, going back up the road in haste toward Stevenson.

At this point the State rested its case.

DEFENDANTS' EVIDENCE

CHARLEY WEEMS, one of the defendants, having been duly sworn, testified as a witness in his own behalf as follows:

My name is Charley Weems. I was on this freight train running between Stevenson and Paint Rock on March 25th. There were twelve of us negro boys on that train. There were seven white boys on there. I first seen the white boys when we left Chattanooga. I did not see the girls on the train till we got to Paint Rock. I got on the side of a box car at Chattanooga and crawled over to an oil tank. When the train slowed up at Main Street I came across the box car to the oil tank. When we got up to that next little town above Chattanooga, I left the oil tank and went to the gondola. I don't know what town it was. I had been out of Chattanooga about an hour or a little over. The fight between the white boys and the negroes started down here at Stevenson, after we left Stevenson. The white boys were in the gondola. The negroes got in the gondola directly [fol. 44] after we left Stevenson. Haywood Patterson and that long yellow boy back there first went in the gondola. Three of us went over in the gondola. What prompted me to go in the gondola, Haywood Patterson had a pistol and he said "Come on and help me get the white boys off; if you don't I am going to shoot you off." I don't know whether any of the negro-s had been quarreling. They were not on the train where I was. I was one of the three boys that went in the gondola first. I was behind Haywood Patterson. Haywood Patterson just walked up and hit this white fellow over the head with a pistol. I was not doing anything at all. I didn't have a pocket knife or nothing. I just told the white boys to get off. A fight did not start. These white boys did not fight at all; they just run and tried to get off the train. About five got off the train. I could not tell how many stayed on the train. Some of them went off toward the engine. I don't know where the girls were. I didn't see the girls. I never did see the girls. I got off the train when we got to Paint Rock. I got off the train. Five boys got off the train in all. The five were me and Clarence Norris, Ozie Powell, Willie Roberson and that boy back there, Olen Montgomery, that blind boy. I had known these negroes that were with me since we left Atlanta; we left Atlanta together. I did not know the rest until we got on the road. The first time I saw these girls was when we got to Paint Rock. They were getting off the train. They got off the gondola. I wasn't in the gondola they were on. I wasn't in that gondola at all. I had not been in that particular car, not where they were. I did not see the girls until they were getting off the gondola. I don't know how many gondolas were on that train; five or six on that train along in line together; some were, and some on the other side of box cars; a box car was between them. I had nothing to do with the girls at all. If anybody had anything to do with the girls, I don't know nothing about it. I have been in trouble in Atlanta one time, about a fight. That is the only time I have been arrested. I worked with W. B. Shepherd on a grading camp. I have been working for him about three years. My home is in Atlanta, Ga. My parents are not living. My mother and father are dead. I stayed at home and went to the country and worked with my aunt before I went to work for Shepherd.

Cross-examination:

My name is Charley Weems. I got on that train at Chattanooga. I was going to Memphis, Tennessee. I got on between [fol. 45] a box car down at the bridge. I got on top when it got to Main Street and walked over and got down on an oil tank. When the train pulled out of Main Street, I saw some girls on that tank car. I wasn't on a gondola. I was on an oil tank, I got over in the gondola down at Stevenson. I walked over the top of the gondola. Some white fellows were in the gondola. There was gravel in that gondola. These white boys were in the car when I got in it at Stevenson. I did not jump off the box car into the gondola. I climbed down and stepped in. The car had steps on the end of it. Haywood Patterson told me to go in there and help throw them white fellows off; if I didn't he was going to shoot me off. That is Patterson (indicating). He told me why he wanted me to go along. He wanted to go in there and help throw the white fellows off. He said he was throwing them off because they had been trying to run over him down in the oil tank. Haywood Patterson had a pistol. I did not have a pistol. I saw his pistol. He went back along the train to call me to help throw the boys off. There were seven white boys on the train. We had come to Stevenson from Chattanooga before we got in there. I could not see all over the gondola and there could not have been anybody hid in there where I could not have seen them. I did not see those two girls in there. The boys were lying right in the center of the gondola car. I did not see the girls at no time until I got to Paint Rock. Five boys were put off. Haywood Patterson hit one; I don't know his name, but he had on a big wide belt, and he hit him across the head with a pistol. When he hit him he did not catch hold of him. He didn't grab him. This white fellow just jumped off and said "Yes, we will get off." He did not fight because the white fellow got scared of the pistol and climbed down on the side of the car and jumped off. The other fellow jumped off. They all jumped off but one. One little white boy stayed in the car and Patterson said to put him off and he done put his foot down on the side and another boy had a big knife around his throat. He did not jump off. He begged for mercy and I reached down and pulled him back on the box car. I never saw these girls at all and never had anything to do with them; never had my hands on them. I could tell the girls from the boys. Just because they had on overalls, it would change their looks with me. There wasn't a soul in that car with me and Patterson except these negroes and one white boy.

There were four of us colored boys back there in a box car where I was. The other five were back in the car with this other white boy, talking. Some of them left there from the [fol. 46] time I left Chattanooga until I got to Paint Rock. They left down here after we got through this next town above here, Stevenson. Five boys got off there. There were nine on the train when we got to Paint Rock. I told the jury a while ago that there was four of us boys together when we left Chattanooga. I did not tell the jury a while ago that there was only twelve negroes when we started from Chattanooga. I did not say how many negroes was on the train at all; there was fourteen on the train. I counted them five that got off did not have nothing to do with these people at all. Those five got off between here and Stevenson. I did not know them, and don't know who they were. When I got to Paint Rock, I was up about that car where them boys were talking to them white fellows. I wasn't in the gondola car when I got there. I don't know where I was when I passed this place. I never saw the girls until I got to Paint Rock. I am the one being tried with Clarence Norris. He was there with me. He was in the gondola with me. We were sitting down. Me and him and Ozie Powell and Willie Roberson and Olen Montgomery were in there. We were all in the gondola when we got to Paint Rock. I never saw no girls in this gondola we were in at all. I first saw the girls when they came toting them through Paint Rock. They had the oldest girl in a chair coming through Paint Rock. She did not get out of the gondola I got out of. I don't know whether she got of- a gondola or not. The first I saw of either one of the girls they were bringing the oldest girl up in a chair. I told that to the officers when I was arrested. I told them I did not have anything to do with either one of the women. Nobody made any threats against me. Nobody made me talk. Nobody made any promise to get me to talk. I did not tell the officers there at Paint Rock that I saw these other boys rape those girls and I did not have anything to do with it. I told them he had a pistol; that is all I told them, that Haywood Patterson had the pistol. My friend and I being tried did not have a pistol. I did not have a pistol or any pocket knife. I had nothing to do with the raping of the girls. I never saw anything done to the girls.

Clarence Norris, one of the defendants, having been duly sworn, testified as a witness in his own behalf as follows:

[fol. 47] **Direct examination:**

I am one of the defendants. My home is in Atlanta. I have been living there about five years. I have never been in any trouble. What I was doing up here in this section of the country I was going down to Sheffield to my aunt's. I got on this train at Chattanooga. Four of us caught the train together. The boy that just testified was one of them. I have forgotten the boys name yonder; he is right yonder (indicating). I got on an oil tank. I don't know how far I remained on that oil tank; we were about four or five miles, I guess. I went across from the oil tank to a flat of cross-ties. I went to go and sit down. I went to go by myself. I was the only one there. I did not leave that car. I stayed there. I was not in the gondola when this fight occurred. I seen two boys on the flat where I was on the cross-ties. I did not have any trouble with them. I did not have a pistol or a knife. I did not leave that car I was riding on. I did not leave it at Paint Rock. I don't know who took me off the train at Paint Rock, there was so many there. I remember getting off. I got off at Paint Rock, I reckon. I did not just leave the train. They threw guns on me, the officers did. I had not been engaged in the fight at all but I seen the fight. The fight took place in the gondola car. Every one of them colored boys was fighting. They were all fighting. That one yonder, Haywood Patterson, started the fight. He came across the flat car where I was on the crossties; him and the rest of them colored boys come across that car and said he was going over there to run the white boys off and going to have something to do with them white girls. I saw this boy that just testified before me on the stand. They came across where I was sitting down at that time. They knew the girls were on the train and the white boys with the girls on the gondola car. I had not seen the girls. I hadn't seen them till I got off this flat car I was sitting in, and seen these boys fall off the train; after he said he was going to run them off I seen them fall off the train and I asked two white boys what they were getting off the train for and he told me he did not know, and I got up on the train to see if he was putting them off, and sure enough I got up on the box car and looked where they were and the whole crowd was putting the white boys off. One had a knife around the other's *k*neck and trying to push him off, and he wouldn't get off and the other boy took him and pulled him back up in the car. I did not have anything to [fol. 48] do with the girls. I did not have my hand on any of them. I did not hold them or anything of that sort. When I first saw the girls the train was away up the road. When I saw the girls was when I got up on the box car and looked over where he was putting the white boys off.

Cross-examination:

My name is Clarence Norris. I did not get into that gondola at all. I just looked in. This Weems I was speaking about here is not my friend. I knew him. I saw him over in the gondola and I saw the girls in there, but I did not go in there. I saw that negro in there with those girls. I seen every one of them have something to do with those girls after they put the white boys off the train. After they put the white boys off I was sitting up on the box car and I saw every one have something to do with those girls. I was sitting on top of the box car. I saw that negro just on the stand, Weems, rape one of those girls. I saw that myself. When the officers searched me they did not find anything on me. They did not find a pearl-handled knife. They did not find a pearl-handled knife on me. I did not have a knife or pistol. I did not go down in the car and I did not have my hands on the girls at all, but I saw that one rape her. They all raped her, everyone of them. There wasn't anyone holding the girls legs when Weems raped her, as far as I saw. The other boy sitting yonder had a knife around her throat, that one sitting on the end behind the little boy. I don't know what his name is, but he is the one that had the knife. I did not see the little one hold of her legs while this one was raping her. I did not see anybody holding her legs. I don't know who pulled off her overalls. The girls were lying down when I got up on the box car. This big one did not have a knife on her throat. That little boy sitting behind yonder—I don't know his name—is the one that had a knife around her neck, making her lie down while the others raped her.

I didn't see any of the negroes take her overalls off. The girls were lying down when I got up on the box car. I saw the overalls lying in the car. I did not see any step-ins. I did not get down in the gondola, never did get down in there. When the officers arrested me I was on a flat car of crossties where two white boys were. Some of the white boys are here in jail. They said they had seven white boys down there; I don't know whether it is them or not, but we were in Paint Rock when they took us off the train. I was not down in the gondola. I did not take a knife off one of the girls and put it in my pocket. The [fol. 49] officers did not take that knife off of me when he arrested me. I did not have any knife. When I saw these girls they had on overalls. I don't know whether they had any coat on or not. The overalls had bibbs on them, like mine, running up to the neck. I don't know what was under those overalls.

Redirect examination:

I don't know whether they had on dresses under the overalls or not. I know what step-ins are. Step-ins are what women put on under their clothes. I don't know what they are. They are something. I did not see any step-ins these women had. They had their overalls off when I got on the box car. I don't know who took them off. They were lying down when I got up on the box car. I don'know whether they had on clothes or not. I was standing looking at them but I could not tell whether the girls had clothes on or not. I could see their faces but I could not see their bodies. I don't know whether they had on stockings. I did not see that much of them. Everyone that was in that gondola car had something to do with those girls, all eight of them, but I did not. I did not make a statement a few minutes ago to Judge Moody and Mr. Roddy that that boy just on the stand did not have anything to do with them. I did not say that boy never. I said I never had anything to do with them. I did not tell Judge Moody and Mr. Roddy that he didn't. I say now that he did; he had something to do with them, but I did not have anything to do with them. I told Mr. Roddy that. I told Mr. Roddy I did not have anything to do with them and the rest of them did have something to do with them. I did not say this man just on the stand did not have anything to do with them. I pointed out some of them and did not have anything to do with them.

I did not point them all out because all were trying to talk. The boy just on the stand had something to do with them. I could tell whether the girls had on any clothing at all. When one of those negroes would get off, I could tell whether she had on any clothes. I don't know a thing about her clothes at all. I just seen the overalls lying down in the gondola car. I don't know who took the overalls off of them. When I got up on the box car looking down in there, they were on the girls. I don't know who took them off.

Recross-examination:

I am positive and I am swearing now. I held up my right hand to tell the truth, and I am telling the truth. That negro Weems that was on the witness stand did ravish that girl. He was on her. I have never seen this [fol. 50] knife before, which is exhibited to me by counsel for the State. I have not had any knife at all. The officer did not get this knife off me. I had nothing to do with it and I don't know anything about it.

At this point the defendants rested their case.

STATE'S REBUTTAL EVIDENCE

ARTHUR WOODALL, a witness for the State, in rebuttal, having been duly sworn, testified as follows:

I am deputy sheriff of this county. I was down there the evening those darkies were brought to jail. I was assisting the Sheriff, as his deputy; the Sheriff wasn't there. I searched all of these darkies. I don't know the negro Norris, sitting over yonder is one of the negroes. I don't know his name. He gave me his name as Norris. I took the names down. I took this knife, exhibited to me by counsel for the State, off that negro there, that big lipped one. That is the knife I took off of him.

Cross-examination:

It was day time when I took it off him, about four or four-thirty o'clock. These negro boys were brought from

Paint Rock and I came from Stevenson. I brought the white boys down here. I found this knife on that negro right there (indicating).

Victoria Price, a witness for the State, in rebuttal, having been duly sworn, testified as follows:

Direct examination:

I know this knife, exhibited to me by counsel for the State. That is my knife. I had it on my person at the time of this trouble on the train. I did not lose it. It was taken off me. That Norris, the smallest one, that one sitting there, took it off me. He also took $1.50 in money and a pocket handkerchief.

The foregoing is all the evidence offered on the trial of this cause.

After both sides had closed their testimony, defendants' counsel stated to the court that they did not care to argue the case to the jury, but counsel for the State stated to the court that they did wish to argue the case to the jury, and one of counsel for the state proceeded to argue the case to [fol. 51] the jury. At the conclusion of said argument of counsel for the state to the jury counsel for defendants stated that they still did not wish to argue the case to the jury, and objected separately and severally on behalf of the defendants to any further argument of the case to the jury by counsel for the State, on the grounds that after counsel for defendants had declined to argue the case to the jury any further argument on behalf of counsel for the State to the jury would be contrary to the law and the rules of practice of this court, and would be harmful and prejudicial to the interest of the defendants. The court overruled said objection and permitted counsel for the State to further argue the case to the jury, to which action of the court defendants separately and severally reserved an exception.

COURT'S ORAL CHARGE TO JURY

The court thereupon charged the jury orally as follows:

Gentlemen of the jury, let me have your attention for a few moments and then you will have this case. The defendants in this case, Charlie Weems, alias Charles Weems, and Clarence Norris are indicted jointly with several other defendants charged with the offense of rape under our statute. Only the defendants Norris and Weems are on trial before you and you only consider, of course, their case in your consideration now.

Gentlemen of the jury, the grand jury of this county has indicted these two defendants, together with several others, for the crime of rape under our statute. Rape, gentlemen of the jury, as defined by the Code of Alabama, is "Proof of actual penetration is sufficient when the act is shown to have been committed forcibly and against the consent of the person on whom the offense was committed." The State insists that these defendants together in one act, one assisting the other while the act was committed by force and against the consent of one Victoria Price, had intercourse with her somewhere up here in this county. That is the charge set out and made to this indictment here by the grand jury.

In answer to this charge, gentlemen of the jury, the defendants each plead not guilty. That puts the burden of proof on the State in this case as in all other cases to satisfy you from the testimony beyond a reasonable doubt of the guilt of these defendants before you can convict them. They come into the court with the presumption of innocence in their favor and that presumption remains with them throughout the trial of the case till the testimony convinces the jury of their guilt beyond a reasonable doubt. [fol. 52] Gentlemen of the jury, under our law, and it is proper that I call your attention to it, the indictment by implication also covers the lesser degree of criminal assult in cases of this kind, that is to say, an assault with intent to rape and an assault and battery. If you are not convinced beyond a reasonable doubt of the guilt of the defendants or either of them of the higher offense, then they may be convicted, if you are convinced beyond a reasonable doubt, of the lesser offense. The law, gentlemen of the jury, is short in regard to charges of this kind, it is simple, and the case comes to you as jurors under your oaths to settle this case according to law as I have endeavored to give you in charge and the evidence you have heard here from the witness stand. You are the sole judges of the testimony and of the weight you give the testimony of each party concerned, the prosecutrix and the witnesses testifying and of the defendants. It is improper for me to say what I think or to intimate what I might think of the testimony of the parties or witnesses or any of them concerned in it. That is a matter for you and of which you are the sole judges and for you to determine under your oaths as jurors.

Take this case in a few minutes and try it under your oaths and let that guide you in the performance of your duty when you go to your jury room and from the testimony and the facts you have heard endeavor to give these defendants on one side and the State on the other a fair and impartial trial. You have a right to look at the testimony of the witnesses and the parties in the light of their interest, if they are interested, and you may weight their testimony according to their reason for knowing or not knowing the matters about which they testify, and from the whole thing ferret it out, weigh it, revolve it in your minds and see what is just and right between the State on one side and the defendants on the other.

As I said to you a while ago, gentlemen of the jury, if you are convinced of the defendants' guilt beyond a reasonable doubt, then you fix the punishment in the higher offense. If they are guilty as charged in the indictment of rape, gentlemen of the jury, the punishment is by death or imprisonment in the pentitentiary for not less than ten years. If they are not guilty of the higher offense or either of them and you are convinced of the guilt of the lower offense as outlined to you a while ago, then the punishment is not with you, but the guilt or innocence is only what you pass on, the punishment is left with the court. The punishment for an assault, gentlemen of the jury, is a fine of not more than [fol. 53] $500.00. If, however, you reach the conclusion that one defendant is guilty of the higher offense and the other not guilty of the higher offense or some other offense, it would be necessary for you to so state in your verdict.

The State in this case, gentlemen of the jury, insists that one of the defendants actually had intercourse forcibly and against the consent of this prosecuting witness, Victoria Price, and that the other held the prosecutrix or this girl while the other was committing the offense of rape. What has that to do with the case? It means this, gentlemen of the jury: Under our law they both may be guilty of the higher offense of rape, though only one performed the act of criminal knowledge, had carnal knowledge forcibly against the will of this prosecutrix, if the other was present aiding and assisting in the forcible assault made by the other party. In other words, it would not be necessary for both to have had intercourse forcibly and against the consent of this prosecuting witness at that time and place for both to be guilty; if one held knife or held the girl by the throat or mouth as the State insists, then they would, of course, be equally guilty. Any person who aids or assists another in the commission of an offense like this, or any other offense, one is as guilty as the other, though the real act may only be performed by one. How that is, gentlemen of the jury, is for you to say. If one of the defendants was only present and had nothing to do with the commission of the crime and the other committed it, then, of course, only one would be guilty. How that was, gentlemen of the jury, they both plead not guilty, and that is for you to say. And in order to convict these defendants, you must be convinced of their guilt beyond a reasonable doubt.

Gentlemen of the jury, it is necessary for me to give the forms of several verdicts in this case under the law. If the defendants are guilty of the higher offense, this is the form of your verdict, "We, the jury, find the defendants guilty of rape as charged in the indictment, and we fix their punishment at death," or at imprisonment for any number of years, not less than ten. If they are not guilty of the higher offense but are guilty of an assault with intent to rape, then this is the form of your verdict, "We, the jury, find the defendants guilty of an assault with intent to rape as charged in the indictment," and you don't fix the punishment. For the lower offense it is, "We the jury, find the defendants guilty of an assault and we assess a fine against them for so much," not more than $500.00. If they are not guilty, then it is, "We, the jury, find the defendants not guilty."

[fol. 54] But, however, gentlemen of the jury, if you should find the defendants guilty of different degrees, that is, separate, one of the higher and one of the lower, then it is necessary for you to so state in your verdict, "We, the jury, find the defendant Charley Weems guilty of rape as charged in the indictment" and fix his punishment, and we find the defendant Norris guilty of some other offense, if you should find him guilty, then your verdict would be separate. If you find them guilty of the same offense then it is "We, the jury, find the defendants guilty of so and so as charged in the indictment." I was just trying to make that clear to you if you were to give them different punishment for either; if both are not the same, then it would be necessary for you to so state in your verdict.

It is necessary that I outline, gentlemen of the jury, all these different elements of assault and assault with intent to ravish as well as the law of rape. The law makes it my duty to outline them to you and to give you the different verdicts and it is for you to say what the defendants are guilty of and whether they are guilty of anything or not, and as I said to you, you must be convinced beyond a reasonable doubt.

Thereupon, on the 9th day of April, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a motion to set aside the verdict and to grant the defendants a new trial, which said motion is in words and figures as follows, to-wit:

In Circuit Court of Jackson County

State of Alabama

vs.

Charlie Weems, Clarence Norris

Motion for New Trial

Comes the defendants and moves the court to set aside the verdict of the conviction in this cause for that:

1st. The court was in error in refusing to grant the petition of defendants asking for a change of venue and removing this cause to another county.

2nd. The defendants allege that the court was in error in refusing to allow him a special jury to be drawn and summons on his request for his trial.

Stephen R. Roddy, Milo Moody, Attorneys for Defts.

[File endorsement omitted.]

[fol. 55] On the 6th day of May, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court an amendment to the foregoing motion for new trial, which said amended motion is in words and figures as follows, to-wit:

AMENDED MOTION FOR NEW TRIAL

Comes the defendants, Charley Weems and Clarence Norris, by permission of the court, and amends their motion for a new trial heretofore filed in the cause of the State of Alabama vs. Charley Weems and Clarence Norris, and moves the court to set aside the verdict and judgment rendered in this cause on the 7th day of April, 1931, and to grant these defendants a new trial and for grounds of said motion sets down and assigns the following reasons and causes separately and severally.

I. The court was in error in refusing to grant the petition and motion of the defendants, Charley Weems and Clarence Norris for a change of venue and in failing to enter an order removing the trial of this cause from Jackson County to some other county in the State of Alabama.

II. The court was in error in failing and refusing to allow the defendants a special jury, or special venire to be summoned and drawn at their request in this case on account of local prejudice and because of publications which had been made through the press in Jackson County, Alabama, and in other counties where the newspapers were circulated in Jackson County.

III. A new trial should be granted because the court erred in not questioning and interrogating the members of the jury who tried this case, as to whether or not they entertained racial prejudice against the defendants because they were negroes.

IV. A new trial should be granted because public excitement was so high that when these defendants were arrested that a large crowd gathered at Paint Rock, Alabama, and threats of violence and lynching *was* made against the defendants to such an extent that an appeal was made to the Governor of the State of Alabama to send state troops to Scottsboro for protection of the defendants, and state troops were sent to Scottsboro and the defendants guarded by state troops from Scottsboro jail to Gadsden, Alabama, where they were detained in jail until the time of the trial and were escorted by an escort of troops from Gadsden, Alabama, to Scottsboro, Alabama, and guarded during the trial by more than one hundred troops and by six or eight machine guns and weapons used in military warfare during the trial.

[fol. 56] V. A new trial should be granted because notwithstanding the excitement throughout the county of Jackson and adjacent counties in that section of Alabama, hundreds of people visited Scottsboro who did not live in Jackson County, but some in other counties and some in the State of Georgia and some from the State of Tennessee, and this crowd that visited Scottsboro were all unfriendly to the defendants. No friends appeared during the trial to offer the defendants comfort, advice, or financial aid, and they were held in jail without bond and without an opportunity to see their kinsfolk or friends, or prepare their case for trial.

VI. A new trial should be granted because of the state of excitement in Scottsboro, and when the jury reported in the case of these defendants, there was a public demonstration by the clapping of hands and hollowing in the court room in the court house where these defendants were tried as a result of the verdict of the jury imposing the death sentence.

VII. A new trial should be granted because of error in the part of the court in refusing to permit the defendant's counsel to cross-examine and interrogate the prosecutors as to their general reputation and character.

VIII. A new trial should be granted Charley Weems because he was tried with Clarence Norris when there was hostilities between he and Norris thought that it would benefit Norris for him to say that Charley Weems was guilty of one of the charges, or the evidence tends to the inference that there was hostilities between these defendants.

IX. A new trial should be granted Clarence Norris because of antagonistic interest on the part of Charley Weems all of which is developed in the redirect examination of Clarence Norris in his examination on the trial of this cause tending to show that he made a statement before going on the stand to the attorneys and after going on the stand, he repudiated his statement to them which prejudiced his case in the mind of the jury and about a matter which was improper to be brought in the trial against Norris himself. The question of guilt or innocence of Weems was used to the prejudice of Norris, when Norris ought to have been tried by himself and tried alone on the evidence against him.

X. A new trial should be granted because the jurors to try the case against these two defendants were permitted to sit in the court room and to hear the discussion between the court and counsel preliminary to the opening of the trial and to hear the evidence introduced by the defendants on their application for a change of venue.

[fol. 57] XI. A new trial should be granted these defendants because their constitutional rights as guaranteed by Article 14, Section 1, of the Amendment to the Constitution of the United States which provides, "That no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," and the rights of these defendants were violated under the Constitution of the United States for the following reasons:

(a) They were arrested and placed in jail and had no fair chance to employ counsel or to communicate with their families or friends;

(b) They were placed in a jail in a distant city from their homes where their kinsfolk were afraid to visit them on account of fear or personal violence;

(c) Because they were unacquainted with any attorney or attorneys in that neighborhood and unable to make financial arrangements to employ an attorney to represent them;

(d) Because there was not sufficient time between the time they were arrested and the time of their trial to properly prepare the case for trial;

(e) Because of racial prejudice prevailing in the county where the trial was held, they being negroes or citizens of African descent;

(f) Because there was a demonstration in the court room and out on the streets outside of the court room when the jury reported its verdict against these defendants;

(g) Because of the ignorance of these defendants and their immature years they did not know their rights under the law and did not know how to prepare for a trial and did not know how to get witnesses to the court and were held in jail without bond;

(h) Because they were frightened, intimidated and had been threatened and thought their lives were in peril and they had no money with which to employ counsel, or to send for friends, and they were utterly helpless;

(i) Because they were not guilty of the charges preferred against them and should have been granted a separate trial.

XII. A new trial should be granted because the constitutional rights of these defendants were violated for the reason that Article 1, Section 6, of the Constitution of the State of Alabama, which provides, "That in all criminal prosecutions, the accused has a right to be heard by him- [fol. 58] self and counsel * * * and he shall not be deprived of life, liberty, or property except by due process of law," and the trial of these defendants were conducted in such a manner as to be violative of the due process of law clause of the Constitution of the State of Alabama, for the reasons set out in this motion and for the reasons appearing in the transcript of the testimony of the trial of this case.

XIII. A new trial should be granted because under the laws of the State of Alabama, and under the laws of the United States, the defendants were not given a fair and impartial trial as contemplated by the laws of the State of Alabama and by the laws of the United States.

XIV. A new trial should be granted because the case should have been continued on application made by counsel for the defendants at the time of the trial, for the reason the public excitement was prevailing in the county against the defendants, and because the defendants had not had reasonable time to prepare their defense for trial, and because the necessity for troops rendered it impossible to keep inviolable the precincts of the prisoners' dock, the counsel's place, the witness chair, the jury's seats and the intervening space within the court house and in the surroundings free from hostility and unfriendly invasion or intrusion, because the accused ought not to be terrified on the trial, or his counsel confused in making his defense, lest the witness testify falsely under fear of inducement, or lest the jury be overawed, or their minds influenced by an atmosphere surcharged with hostility or partiality, and this trial was surcharged with hostility towards these defendants and violated the Constitution of the State of Alabama.

XV. A new trial should be granted because there is no evidence to support the verdict of the jury against the defendants, and because the weight of the legal evidence preponderates in their favor.

G. W. Chamlee, Attorney.

[File endorsement omitted.]

[fol. 59] EXHIBIT TO AMEND MOTION FOR A NEW TRIAL

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION 1931

No. 2402

STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, alias CLARENCE MORRIS

Section 12 Above

Appearances:

H. G. Bailey and Proctor and Snodgrass, Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury, when the following proceedings were had and done, to-wit:

The Court: All right, the first case Solicitor is the case of State vs. Haywood Patterson, et als., what says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants but people who are interested in them have spoken to me about it and as Your Honor knows I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is, whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them that is the only thing I am interested in—I would like to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel.

Mr. Roddy: I would not like for Your Honor to rule me out of it——

[fol. 60] The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances, all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel; is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see this situation of course and I have not run out of anything yet, of course if your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case, they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the court appointing anybody, if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar [fol. 61] with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me come down here and pay counsel. If they should do it I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it, I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend to me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it, I am interested to that extent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment; of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

[fol. 62] Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar, I will go ahead and help do anything I can do.

The Court: All right."

On the 6th day of May, 1931, the defendants, separately and severally, filed in said cause a petition, which said petition is in words and figures as follows, to-wit:

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et al., Defendants

PETITION OF CLAUDE PATTERSON ET AL.

"To the Honorable E. A. Hawkins, Judge of the Circuit Court of Jackson County, Alabama:

The petitioners, Claude Patterson, Ada Wright, and Mamie Williams most respectfully show unto the court that

Claude Patterson is the father of Haywood Patterson, and that Ada Wright is the mother of Roy Wright and Andy Wright, and that Mamie Williams is the mother of Eugene Williams and that these petitioners employed George W. Chamlee, attorney-at-law, of Chattanooga, Tennessee, to represent their boys in the case of the State of Alabama vs. Haywood Patterson et al., pending in the Circuit Court of Jackson County, Alabama, and which they desire to be appealed from that court to the Supreme Court of the State of Alabama, in the event a new trial is not granted Haywood Patterson, and if a new trial is granted for him, the petitioners, Ada Wright and Mamie Williams desire that the cases against their boys be appealed to the Supreme Court of the State of Alabama.

Claude Patterson shows unto *to* the Supreme Court that George W. Chamlee had been his attorney in legal matters several years ago and recently in the early part of 1931, Claude Patterson employed Mr. Chamlee as his attorney to defend a case against his son, Julian Patterson of Chattanooga, Tennessee, and that they had made a contract with Mr. Chamlee to represent their boys in these cases at Scottsboro, Alabama, and also on appeal from the case at Scottsboro, Alabama, and that they had not employed any other attorney and they had not authorized any other [fol. 63] attorney to represent them, or to bind them in the premises.

They further show unto the court that since their boys have been arrested that they had only had one opportunity of visiting their boys and that was in the City of Birmingham, Alabama, and that their boys told them that they had signed a request in the form of a contract asking Mr. Chamlee to represent all of them on appeal in their cases, and that all of the defendants in Birmingham *jaul* stated to these petitioners that they had likewise signed such a contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to make any reasonable investigation of the cases, and the defendants were all in company with each other in their joint cells in jail and no opportunity to write or take notes of what each one had to say about his case and no opportunity for a private conversation whatsoever with the defendants.

Petitioners carried their attorneys with them and *was*- informed that if their attorney had not been with them that they could not have seen their boys and that they would soon be removed from Birmingham to Kilby Prison at or near Montgomery, Alabama. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Alabama, and on April 29, 1931, their attorney communicated with the warden of Kilby Prison and was informed that no one could see the defendants except upon a written order of this Honorable Court and for them not to come to Montgomery, Alabama, with the expectation of seeing them without an order from this Honorable Court.

Petitioners are advised that important evidence, touching the merits of the cases of these defendants, has been discovered since the trial and that in order for newly discovered evidence to be presented, under the laws of the State of Alabama, that the defendant must make an affidavit or show a good cause why he did not have the evidence on the regular trial and give a meritorious reason for not producing it when he was tried before it would be available on the hearing of a motion for a new trial.

Petitioners further show unto the court that the defendants were arrested on the 25th day of March, 1931, and were indicted in the last days of March, 1931, and the first days of April, 1931, and were put on trial about the 6th, 7th, and 8th and 9th of April, 1931, and that these petitioners were not permitted to see them prior to the time of the trial and they have only seen them one time since the trial. They are advised that under the laws of the State of Ala- [fol. 64] bama that the parents of children under twenty-one years of age, who in company with responsible and reputable counsel, have a lawful right to a conversation with their children separately and apart from other persons, one at a time, for the purpose of preparing cases for trial.

These petitioners have not read the transcripts of the records in these cases and do not know the merits of the testimony introduced on the trial, but have been informed that there was some antagonistic interest involved between certain of the defendants and that separate trials ought to have been had by some of them in order to avoid conflicting interest prejudicing the case or cases against others.

These petitioners are all colored people and they were afraid to visit Scottsboro at the time of the trial and are afraid to visit Scottsboro now, and if the defendant, Haywood Patterson, has to be brought to court when the motion for a new trial is heard, they would petition the hearing be had at Montgomery, Alabama, or at Kilby Prison, so that no risk of violence would be assumed and that they might attend the hearing in person when the motion for a new trial was heard.

Petitioners further show and represent that they are advised, that in view of new facts and newly discovered evidence, that has been learned of since the trial, that the hearing of a motion for a new trial ought to be continued from May 6, 1931, until some later date, in order to prepare the motion for a new trial to be presented to Your Honor.

Petitioners especially appeal to this Honorable Court to afford them and to their counsel every reasonable opportunity to present such evidence as they may have, or may obtain on the hearing of the motion for a new trial and to afford them an opportunity of presenting additional affidavits from witnesses of whom they have heard, and which said witnessess, one of whom is reported to be at Paint Rock, claims that when Victoria Price first got off the train, she was asked if any of the defendants had done anything to her, and that she said they had not.

Affiants desire to file this petition as parents and next friends of their children, and especially does Claude Patterson desire to file it on behalf of Haywood Patterson, whose motion for a new trial has been set for hearing May 6, 1931, and that as Haywood Patterson is in Kilby Prison and as the keeper of that prison has informed G. W. Chamlee, attorney, that he could only see Haywood Patterson upon a written order from the Judge of the Circuit Court of Jackson County, that this affiant desires to file that affi-[fol. 65] davit, to be considered on the motion as a reason why the affidavit of Haywood Patterson is not filed herein.

Affiant Claude Patterson, further makes oath that Haywood Patterson told him that threats were made against him when he was arrested to lynch him, and that all of the defendants were scared, and if it had not been for the military company coming he believes that all of them would have been killed.

Affiant further stated that Haywood Patterson told him that when the jury reported in the case against Weems and Norris, and give them a verdict of death, that the people in the Court house clapped their hands and some of them hollored, and a few people left the court house and went outside and in a minute or two the crowd outside commenced holloring and that there was a great demonstration out in the streets of Scottsboro.

Affiant further states that he was afraid to go to Scottsboro and was afraid to go to Gadsden, and that he was utterly helpless, at and before the trial, as far as rendering any assistance to his boy was concerned, or getting him any witnesses.

Ada Wright and Mamie Williams join in this affidavit, and say their boys told them about the demonstration in the court house when Norris and Weems were convicted, and about the threats against their lives.

Affiant further states that they are advised that there are a number of witnesses who saw the train leave Chattanooga and going by Lookout Mountain, where it had to go through the tunnel and that there was about twenty or twenty-five negroes on the train besides the white girls and boys, and that they are advised that the trouble on the train was provoked by the white boys and that after the alleged fight that about ten negro boys got off the train between the time of the alleged fight and the reaching of the station at Paint Rock, and that these parties are evading giving any information about it because they are afraid of the consequences of such disclosures.

Affiants further state that they have talked to a number of people in Chattanooga who claim to know Victoria Price and Ruby Bates and who say that they were women of bad character and reputation and unworthy of belief on their oaths in a court of justice.

They will file with this petition such affidavits as they can get and they hereby make application to this Honorable Court for a permission to file other affidavits, including affidavits of the defendants, in support of the motion for a new trial in the case against Haywood Patterson and such other evidence as they may be able to obtain material thereto.

[fol. 66] The premises considered, the petitioners pray that this Honorable Court will make an order addressed to the Warden of the State Prison of the State of Alabama at Kilby Prison at Montgomery, Alabama, directing or permitting that counsel for Haywood Patterson, et al., be permitted to confer with them in private so as to prepare their legal evidence in the motion for a new trial of Haywood Patterson, and for the appeal of the cases against the other defendants who have been tried.

II

Than an order be made authorizing the Warden of Kilby Prison to permit the parents and relatives of the defendants to see the defendants in the presence of the Deputy Warden, or guards, such as may be provided by the rules of the prison, so that the petitioners will not be denied the right to visit their children while they are confined in Kilby Prison awaiting the execution of the death sentence.

III

That the hearing of the motion for a new trial of Haywood Patterson set for May 6th, 1931, at Scottsboro, Alabama, be continued for thirty days, or for some reasonable time, and that it be heard at Montgomery, Alabama, or if the defendant is not required to be present at the hearing, that he be granted time to file additional affidavits while the State is making its reply to such as he has filed.

(Signed) G. W. Chamlee, Attorneys.

Duly sworn to by Claude Patterson et al. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 67] On the 19th day of May, 1931, the defendants separately and severally filed in said cause, in support of their motion for new trial, the following affidavits:

In Circuit Court of Jackson County

No. 2402 and 2404

The State of Alabama

vs.

Haywood Patterson, Clarence Norris, Charlie Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery, Eugene Williams

AFFIDAVIT- OF HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE ROBERTSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAMS

The undersigned affiants make oath in due form of law that they were defendants in the above-styled cause, tried at the special session of the Circuit Court of Jackson County, in April, 1931, at Scottsboro, Alabama. Affiants further state that when the court was organized and their cases called for trial, that that did not know who would be their counsel and that they had been in jail ever since they were arrested, March 25, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinsfolks or friends and had no chance to procure witnesses and no opportunity to make bond or to communicate with friends on the outside of the jail.

They further show that there was a discussion between the trial judge and Mr. S. R. Roddy and Mr. Milo Moody and some other attorneys about the cases of these defendants and a copy of that discussion taken from the official record will be filed and marked Exhibit #1 and made a part of this affidavit as fully as if copied and set out herein.

That the case against Clarence Norris and Charlie Weems was tried first and prior to the trial that the Governor of the State of Alabama had provided military forces [fol. 68] with 107 men and officers with six or eight machine guns and rifles commonly used in military warfare to guard the court house and jail and to guard these defendants, prior and during the trial and these military officers had surrounded the courthouse and were keeping the hostile mob or at least keeping away from the courthouse persons that had no business in the courthouse and who might wish to do violence to the affiant or some one of the defendants and while these guards were on duty, the case against Clarence Norris and Charlie Weems was tried and there was a great excitement prevailing throughout the county and in Scottsboro at the time and when the jury reported in this case, the case against Haywood Patterson had been started and his jury was in the jury room adjoining the court room when the jury in the Clarence Norris and Charlie Weems case made its report imposing death penalty, and thereupon there was a demonstration in the courthouse by citizens clapping their hands and hollowing and shouting and soon thereafter a demonstration broke out on the streets of Scottsboro and not long thereafter the Hosiery Mill band came into the business district apparently celebrating the victory of the State and paraded through the public streets and along in front of the courthouse making music for the entertainment of the crowds and at a time when the whole atmosphere was surcharged with excitement and this demonstration was carried on in the presence and hearing of jurors who had to try the third case composed of Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams and the excitement which had been produced by the seriousness and enormity of the charge made against the defendants and added to this the newspapers and press circulated stories through Jackson County which were generally read and accepted as the facts, when in truth these stories were, many of them, utterly untrue and when these defendants had no newspaper to print anything for them and when they had no attorney to write or publish anything on their side or in their defense, or showing that they were innocent and why their identity could be easily mistaken, but notwithstanding these disabilities and these unfortunate circumstances there was a hostile demonstration in the court room and a hostile demonstration through the streets and on the sidewalks in the town of Scottsboro and then a parade by the Hosiery Mill band apparently celebrating and felicitating the jurors upon their verdict and musical demonstration in cooperation with the demonstration put on by the citizens in the streets and on the sidewalk following the verdict in the case against Clarence Norris and Charlie Weems. The jurors who were summoned in the cases next [fol. 69] to be tried were exposed to these demonstrations and celebrations (possibly they participated in the celebration) and they would have to be more than human not to be affected by these demonstrations, and the effect upon the jurors could not help *to* adverse to the defendant then on trial and yet to be tried.

These demonstrations were produced because of high excitement in Jackson County, and that the people who had gathered at Scottsboro to witness these several trials had produced so much excitement that apparently a general holiday was being taken by the Hosiery Mill band so that at the most inopportune time for the interest of these defendants this Hosiery Mill band was parading the streets of Scottsboro and it is reported that they played (such pieces as "Hail, Hail, the Gang's All Here" and "There Will Be a Hot Time in the Old Town Tonight"), but whatever it was and whether this band was innocent and appeared as a mere coincidence or whether it was purposely on the streets can make no difference because the effect on the jurors at that time trying Haywood Patterson and the next jury later selected from the crowd that tried the other five defendants was adverse to them and manifestly to their disadvantage and detriment, and the fact that jurors were or might have been adversely affected by matters happening outside of the court room which adversely affected the interests of the defendants or anyone of them was a denial of due process of law to the defendants and adversely affected the defendants and necessarily denied to them a fair and an impartial trial by free and unbiased and imparial jurors.

Affiants further state that because of the enormity of the charge in the first instance, they were not given a fair trial.

Second. That because they were negroes and paupers and locked in jail without an opportunity to confer with or employ counsel they were not given a fair trial.

Third. That the alleged vicitim was a white woman.

Fourth. Publications in newspapers averring that the proof of guilt was most positive and falsely alleging that some of the defendants or all of them had confessed their guilt, which was not true, but the public throughout Jackson County was made to believe that such were the facts, rendered an impartial — impossible; the fact that the defendants were compelled to go to trial represented by attorneys who, by their own admission in open court, stated that they were not prepared and had made no preparation whatsoever, constituted a denial of due process to the defendants and prevented a fair and impartial trial; this is especially true because in fact the defendants were neither represented by [fol. 70] counsel retained by them or anyone on their behalf authorized to make such retainer, nor was such counsel appointed by the court as trial counsel, according to the record of pages one to eight of the Weems-Norris record annexed hereto and marked Exhibit 1, and made a part hereof, proves that so far as Mr. Roddy is concerned, he made no pretensions that he was retained as attorney for the defendants, and the record shows that he was not appointed as attorney for the defendants; he was, in fact, present merely as an observer by his own admission and made no pretensions at having prepared the case for trial, but sought a change of venue, and that the record shows Mr. Roddy was appointed for the purpose of arraignment only, and when Mr. Roddy appeared the court released all the members of the Scottsboro Bar after arraignment, and when the trial was about to start during the discussion Mr. Moody agreed to assist Mr. Roddy who was never employed and who appeared only by the courtesy of the court, and the defendants were never asked, according to this record, their wishes or desires in the premises and yet the lives of all eight of them were at stake and were later demanded at the hands of a jury at a trial about to begin without an opportunity to tell their trial lawyer their separate defenses, and when forced into trial without witnesses and without an opportunity to secure any witnesses, and in a county hostile to their race and when there was no chance to communicate with the outside, to either parents, relatives or friends, and when they had no money and no one to advise them of their legal or constitutional rights and when they were overawed and intimidated and threatened by a mob of hostile citizens from the day they were arrested until after the sentence of death was pronounced upon them and because of their immature years and because seven of them can neither read nor write anything of consequence and are ignorant of the law and did not know how to prepare their case for trial or how to protect their rights or themselves from insult, embarrassment and intimidation and especially when a mob had gathered in Scottsboro after they were arrested and the Mayor and public officials had to make speeches to try to persuade the mob to adjourn and it was necessary for military forces to come to Scottsboro and to by force of arms disperse this hostile and enraged gathering and to require them to leave the town of Scottsboro and from the County of Jackson the trial jury for all the defendants had to be selected and by reason of a custom of long standing there was not one negro selected for the entire trial, throughout the whole county where a population of 30,000 people when a large number of negro land-owners were [fol. 71] qualified jurors, or for jury service and members of the negro race; all of these indubitable and undisputable facts lead directly to the inevitable and irresistable conclusion that these defendants did not have and can never have a fair and an impartial trial in Jackson County as they are entitled to have under the law of the State of Alabama and under the law of the land.

Affiants further show that the trial was unfair because damaging evidence was admitted in the trial against some of them about Ruby Bates and they were not indicted or called upon to answer any charge about her and any testimony with reference to her should have been excluded and not considered by the court or jury under the indictment upon which they were tried.

Affiants further state that before reaching Paint Rock, Alabama, they did not leave the train because they were not guilty and had no motive or reason to run and they did not run or make any attempt to leave the train or to get away, but a number of other negroes did leave the train and did get away and were never arrested.

Affiants are advised that the prosecuting witness, Victoria Price was a woman of bad reputation and bad character and that the defendants ought to have been permitted to prove on the trial that she was of bad character and bad reputation and the refusal of the court to permit her to be cross-examined on this subject was error and for which a new trial ought to be granted. See affidavits of Silas Johnson and others filed in this cause. Affiants are advised that newly discovered evidence touching the character and reputation of Victoria Price and Ruby Bates has been filed in this case and these affiants did not discover or know about this evidence and its importance until since the trial, but if they had known about it they had no chance to have procured it and to produce it on the trial at Scottsboro, because the witnesses who made the affidavits were afraid to go to Scottsboro to attend the trial and lived out of the State of Alabama where they could not be compelled to attend the trial by court process of this State.

Affiants are advised that there were no safeguards thrown around the jury prior to the starting of the trial in order to keep them free from contact with the population in general and that they were permitted to read hostile newspapers and to witness the demonstration in the Courthouse and on the streets of Scottsboro and to witness the parade of the Hosiery Mill band through the streets when Clarence Norris and Charlie Weems were convicted and that there was no effort on the part of military authorities [fol. 72] to keep jurors, not yet placed on the jury separate and apart from the people in general and these jurors were exposed to excitement, hostilities and prejudicial newspaper articles combined with public feeling surcharged with excitement produced a situation impossible of correction and the result of which adversely affected the defendant, confused counsel who tried to represent them, overawed the men who sit on the jury and rendered an impartial, orderly, quiet, judicial hearing impossible and as a direct result thereof these affiants are about to be deprived of their lives without due process of law and in violation of the most sacred constitutional rights ever provided for in this State and under the laws of the land.

Affiants made application for a change of venue and in their application swore they could not get a fair trial and the events which happened during these several trials confirmed and verify that contention and the trial should have been removed from Scottsboro to some other county as requested in their application for a change of venue.

Affiants are advised that the trial judge did not question the jurors who tried these defendants on the subject as to whether or not they held racial prejudice and whether or not they would give a negro the same fair, patient, impartial hearing that they would give a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsboro there was no man on any of these juries under all the excitement that was qualified to meet the legal requirements of an impartial uninfluenced and unbiased juror as provided for by the laws of the State of Alabama and the laws of the land.

Affiants further state that they were threatened with lynching, terrified by mob and confused and embarrassed through the trial by hostile words, threats and public demonstrations and the jury which tried them knew or had a chance to know and were exposed to these illegal influences, and their minds influenced by an atmosphere surcharged with hostility, partiality, prejudice, caprice and rancor against the defendants and their lives were demanded as a sacrifice therefor without due process of law, then they were not guilty of the charge contained in the indictment against them.

The defendants demanded a special venire or a special list of jurors for their separate trial and this request was refused and denied and the defendants had to go to trial without the right to select or to be consulted about select- [fol. 73] ing the jury to try these cases. These defendants did not challenge any juror and did not know that they had a right to challenge jurors.

The indictment in these cases fail to state sufficient facts in that no time or place or a statement of circumstances were set out giving the facts constituting the alleged offense so as to enable the defendants to properly prepare for trial and to be protected against double jeopardy.

There was a number of white boys on this train who were available as witnesses for the state and were not introduced by the state and no reason given for not doing so and the name of one or more of them appeared on the indictment.

(Signed) Olen Montgomery. (Signed) Eugene (his X mark) Williams. (Signed) Willie (his X mark) Robertson. (Signed) Haywood Patterson. (Signed) Charlie (his X mark) Weems. (Signed) Andy (his X mark) Wright. (Signed) Clarence (his X mark) Norris. (Signed) Ozie (his X mark) Powell.

Subscribed and sworn to before me on this 15th day of May, 1931. (Signed) U. L. Heustess, Notary Public. My commission expires Feb. 27th, 1935. (Seal.)

[File endorsement omitted.]

EXHIBIT NO. 1 TO AFFIDAVIT OF THE EIGHT DEFENDANTS, STATE VS. HAYWOOD PATTERSON ET ALS.

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSIONS, 1931

STATE OF ALABAMA

VS.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

[fol. 74] Appearances:

H. G. Bailey and Proctor & Snodgrass, attorneys for State.

Stephen W. Roddy and Milo Moody, attorneys for defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson, et als. What says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as Your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that; the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that Your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I want to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

[fol. 75] Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for the defendants I don't want to impose upon you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by local counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course, if they have counsel, I don't see the necessity of the court appointing anybody; if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it, Mr. Parks, and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it; if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and I certainly haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it, I would be glad to turn it over to counsel, but I am barely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial, and I think the boys would be better off if I step entirely out of the case, according to my way of looking at it and according to my lack of preparation of it and [fol. 76] not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it; I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court, and not to the defendants; I could not take the case for a fee, because I am not practicing in the general Court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath; that is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel; if he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent.

The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't, of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for ar- [fol. 77] raignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case, and I recognize the principle involved, and the fact that I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk any duty, and I know my duty is whatever the court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the court, I was not trying to shirk any duty whatever, and I want the court to understand my attitude in the matter; I am ready to obey any order of the court.

The Court: Of course, that is a matter with counsel; I know nothing about these affairs.

Mr. Proctor: I wanted the court to understand why it was I agreed to become assisted with counsel for the State; thinking they had counsel, I accepted employment on this side, thinking, of course, they had counsel, and I would be relieved from that duty, and I have been conferring with the Deputy Solicitor about matters pertaining to the trial. I am ready to do whatever the court thinks is the proper thing to do.

The Court: I will leave that matter with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear with their assurance they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue—Shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

[fol. 78] The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have reasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think, in the first place, comes too late.

The Court: I would not require you, of course, I will give you time to answer it.

Mr. Bailey: That is the first ground. If Your Honor permits the filing of it, I move to strike it because it is nothing except conclusions; there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no petition concerning that newspaper article, no affidavit attached, and no witness in support of this. Now, we first object to the filing and the consideration of it. If Your Honor permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time, Solicitor; I know the circumstances sometime but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion; there is no affidavit attached in support of it. Now, Your Honor might permit me to offer testimony on it, but we move to strike it and to demur to it.

Mr. Roddy: Your honor, I might suggest that the petition does not only base conclusions, but it tells facts about troops being here, and Your Honor, please, we offer the Sheriff at this time to show the reason for it and why—the matters set out in the petition itself.

The Court: Well, do you want time to answer it? Have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff, if the court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes, sir.

M. L. Wann, examined as witness on defendant's petition.

[fol. 79] Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this county?
A. Yes, sir.
Q. Did you deem it necessary to call out a unit of the National guard to bring these defendants to court to trial?

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I didn't see any guns there or anything like that, and I did not hear any threats, but——

Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court?
Mr. Wann: Today?

Q. Yes, sir?
A. Yes, sir; I did.
Q. Did you when they were brought here several days ago?
A. Yes, sir.
Q. As sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?
A. Yes, sir; I thought so.
Q. That is on account of the feeling that existed against these defendants?
A. Not only here, but people all over the county——
Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?
A. Yes, sir.

The Court: Is that all?
Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.
The Court: He has a right to lead, Mr. Roddy.

A. Yes, sir.
Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

[fol. 80] A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse, have you?

A. No, sir.

Q. Is it your idea as Sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. Not any higher here than in any adjoining counties.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No, sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the population of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think they can.

Q. Is that your judgment?

A. Yes, sir.

Q. You have heard nothing of any threats or anything in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes, sir.

Mr. Proctor: That is all.

Redirect examination.

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the court house?

A. Yes, sir.

Q. And there is a great throng around this courthouse right now that would come in if you did not have the troops?

A. Yes, sir; they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them; there are several from Madison and Marshall and DeKalb.

Q. And there are hundreds of them around the courthouse at the present time?

[fol. 81] A. Yes, sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No, sir; that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail, that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir; I thought it was my duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

Q. Have you five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Roddy: I might ask Major Starnes.

[fol. 82] Major Joe Starnes, witness for defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defedants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

A. Eleven officers.

Q. These men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9:00 P. M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro, you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

Q. Now, your units of the National Guard have protected these men and have been with them on every appearance they have made in this courthouse?

A. That is correct.

[fol. 83] Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes, sir.

Q. After these men were arrested, when did you first bring them back?

A. On Tuesday of the past week is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?

A. That is right.

Q. Then when did you bring them back?

A. Brought them back and arrived here at 5:15 this morning.

Q. You have had them here twice from Gadsden?

A. That is right.

Q. You bring them here and then carry them back?

A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here of course under orders from the Governor?

A. Yes sir.

Q. And you have been here under his orders ever since?

A. That is correct.

Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro in Jackson County and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants?

A. I have not.

Q. From your knowledge of the situation gained from these trips over here I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

[fol. 84] A. I think so.

Q. Have you seen any demonstration or attempted demonstration toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hostile demonstration.

Q. Your judgment the crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all, your Honor.

The Court: Anything further for the State?

Mr. Bailey: No, sir; we don't care to offer anything further. Now, was our objection to the newspaper articles noted?

The Court: Well, the motion is overruled, gentlemen.

Mr. Roddy: We want to except to your Honor's ruling.

The Court: Yes, I will give you an exception. Let the motion be filed, Mr. Clerk—I will give you an exception to it, Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called, we have some we are not sure about.

The Court: Call the State witnesses Mr. Clerk.

(Witnesses called by the Clerk for the State.)

Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages to the court.

The Court: We will see about it when we get to it. What says the State?

Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first, Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, sir; we don't demand a severance.

[fol. 85] The Court: No severance is demanded. Now, do you want to try them all?

Mr. Bailey: The State demands a severance and we will try under the first joint indictment Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the Court please, I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is, yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the Court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these boys.

The Court: I understand but I don't want to take that up now, I want to proceed with the others.

Mr. Bailey: As long as his age is not presented to the court, we want to proceed.

Mr. Roddy: Before these boys are placed on trial, we would like for Your Honor to pass on that.

The Court: I will pass on that, but we can do that possibly some night when we are not engaged up here with the jury; of course, that is a matter, if it is raised, it comes up to be passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call your witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the Court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. [fol. 86] Amos; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the Court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for those witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect everyone of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here, and if Your Honor will grant me a few minutes' time, I might simplify these matters. I want to be of all the help I can with the court and everyone concerned, but there are some very material facts in the case; I have no motive in this world in appearing down here except to get the absolute truth in this matter, and if Your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know, your Honor please, about our witnesses.

The Court: What about the witnesses, Mr. Sheriff? All right, gentlemen, if we don't get the witnesses here, I will allow you a showing for them. Is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject, of course, to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

[fol. 87] Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under the rule, except as to the other defendants not on trial excused from the rule by court.

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

On the 19th day of May, 1931, defendants separately and severally filed in said cause, in support of their said motion for new trial the separate and several affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher, the joint affidavit of Henry Cokely, Susie Cokely and Georgia Haley, and the affidavit of Percy Ricks, which said affidavits are in words and figures as follows, to-wit:

AFFIDAVIT OF ROBERTA FEARN

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2042 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law that she resides in the town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim in the case of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

[fol. 88] Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute, and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fearn.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public. Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

AFFIDAVIT OF BERTHA LOWE

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price, the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that

Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White, who, as affiant is told, formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at time affiant would see them often and again she would not see them for a month or longer.

She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as [fol. 89] that is where she saw them, in negro section of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

Subscribed and sworn to before me, May 18, 1931. (Signed) Lewis C. Golden, Notary Public, County of ——. My commission expires on the 1st day of May, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF WILLIE CRUTCHER

The undersigned affiant makes oath in due form of law that she resides in the Town of Huntsville, Alabama and that she is personally acquainted with Victoria Price, alleged victim in the case of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

[fol. 90] (Signed) Willie Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF ALLEN CRUTCHER

The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this

Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute and she told affiant that she was going to make a trip in last year from Huntsville, and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and those girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit negroes freely.

(Signed) Allen Crutcher.

Subscribed and sworn to before me May 18, 1931.
(Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama, May 1, 1935.
(Seal.)

[File endorsement omitted.]

[fol. 91] IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON and EUGENE WILLIAMS et al., Defendants

AFFIDAVIT OF HENRY COKLEY, SUSIE COKLEY, AND GEORGIA HALEY

STATE OF GEORGIA,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9, 1916, and that Eugene Williams, her son, was born on December 6, 1917.

These affiants further state that they heard about a boy named Eugene Williams being in trouble in Scottsboro, Alabama, but his age was reported as being 19 years old, and that they did not think it was Eugene Williams of Chattanooga, Tennessee, son of Mamie Williams, and for that reason they did not send an affidavit about his age earlier than this time, and that this is the first they heard that it was Mamie Williams' son and a grandson of Georgia Haley and a nephew of Henry Cokley and his wife, Susie Cokely.

We were living at Chattanooga, Tennessee, just across the State line from Rossville, Georgia, when Mamie Williams was married and were living with her at the time Eugene Williams was born, and we are positive about his age and the date of his birth, as set out in the foregoing affidavit.

(Signed) Henry Cokely. (Signed) Susie Cokely.
(Signed) Georgia (her X mark) Cokley.

[fol. 92] Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk Superior Court, Haralson County, Ga. (Seal.)

[File endorsement omitted.]

Chambers of Judge, Superior Court, Tallapoosa Circuit

J. R. Hutcheson, Judge, Douglasville, Georgia

At Chambers,
Douglasville, Ga., May 6th, 1931.

I do hereby certify that the signature of S. O. Smith, Clerk of the Superior Court of Haralson County, Georgia, is his genuine signature to the attached four pages of typewritten pages.

(Signed) J. R. Hutcheson, Judge S. C., Haralson Co. Ga.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402-2404 and 2406

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OZIE POWELL, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

AFFIDAVIT OF PERCY HICKS

Percy Hicks makes oath that he was on the train that the above named defendants were riding from Chattanooga to Paint Rock, Alabama, on the day that defendants were arrested at Paint Rock, Ala.

That, when the train got to Stevenson, that he saw the [fol. 93] two girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Alabama, going toward Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the other one had on a dress, and that he saw them get on the train and they went into a freight box car.

Later he saw them get out of this box car when the train pulled over on the Southern track at Stevenson he saw them get back into the box car, and they were in it when he last saw them until they got to Paint Rock, and at Paint Rock and they were on the ground running along the train and the second girl was following the first one and looked like they were trying to get away from the train and the officers stopped them.

There was a number of officers there armed and that affiant saw them getting some of the boys out of box cars and some on top of the train, and scattered all along the length of the train.

He saw the car called the gondola on which the girls claimed to be riding and it was nearly full of crushed rock called "Chatt" and loaded within about two feet of the top of the car.

He saw one of these girls a week before this trouble and she was hoboing from Stevenson to Huntsville on a freight train.

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour.

Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Hicks.

Subscribed and sworn to before me on this the 16th day of May, 1931. (Signed) Geo. W. Chamlee, Notary Public, Hamilton County, Tennessee. (Seal.)

[File endorsement omitted.]

[fol. 94] On the 5th day of June, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

SECOND AMENDED MOTION FOR NEW TRIAL

Comes the defendants, Charley Weems and Clarence Norris, in the above styled cause of the State of Alabama vs. Charles Weems and Clarence Norris, and move the court to set aside the verdict and judgment rendered in this case No. 2402 against them on the 7th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant them a new trial and they assign the following reason and causes, separately and severally, to-wit:

I. The indictment on which the defendants were tried was void and illegal—

(a) In that it was vague, indefinite and uncertain.

(b) In that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the defendants;

(c) In that it failed properly to apprise and inform the defendants of the exact nature, basis and grounds of the charge against them and which they were called upon to meet;

(d) In that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment, the defendants could not properly and adequately prepare to meet and defend themselves at the trial;

(e) In that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment, the defendants have become and are subject for the same offence to be twice put in jeopardy of life or limb in violation of said defendants' rights under the constitution of the United States, Amendment 5, which provides: "* * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb," and the rights under the Constitution of the State of Alabama, Article 1, Section 6;

(f) In that the said indictment by reason of its vagueness, indefiniteness and uncertainty was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, which provides: "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state drprive any person of life, [fol. 95] liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws," and under the Constitution of the State of Alabama, Article 1, Section 6, which provides: "that in all criminal prosecutions, the accused * * * shall not be deprived of life, liberty or property, except by due process of law." For these reasons the judgment ought to be arrested and a new trial granted.

II. The defendants on trial for their lives were entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influences and communications which might tend to disturb or distract their minds from a free, impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in advance of the trial that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which a jury was to be chosen, the jury's would be or become influenced against the defendant by the prevailing sentiment and feeling of hostility in the said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendants of their right under the Constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was an abuse of judicial discretion, and constituted reversible error. A new trial should therefore be granted.

III. A new trial should be granted in that the rights of the defendants under the Constitution of the United States, Amendment 14, Section 6, were violated for the following reasons:

(a) Defendants, while under arrest, were not afforded nor did they have an opportunity to employ counsel to aid and advise them;

(b) They had no opportunity to employ an attorney to represent them;

(c) They had no opportunity or sufficient time in the 11 day period between their arrest and trial to prepare properly for the trial on the outcome of which their lives and liberty depended;

(d) They were in prison in a jail situated in a city far away from their home, where their parents and kinsfolk resided and they had no opportunity to communicate with such parents and kinsfolk, who, when they finally learned [fol. 96] of the defendants' plight, dared not visit them for fear of personal violence from a hostile and excited populace;

(e) Due to race feeling and prejudice which prevailed in the county where the trial was held, they could not have and were denied a fair and impartial trial before an unbiased and unprejudiced jury;

(f) Immature in years and lacking the advantages of an education, they were too ignorant and did not know how to prepare for trial or how to obtain the attendance of their witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and they were entirely unacquainted and ignorant of the rules and principles of law;

(g) repeatedly threatened, intimidated and put in fear of death, they neither knew how nor could communicate with their parents to employ an attorney in their case and to advise them about their rights until the very day when the case was called for trial;

(h) continuously and throughout the trial, a crowd of people dominated by prejudice and hostility towards the defendants filled up the court room and by bearing and demeanor influenced the jury adversely to the defendants;

(i) that while the defendants were on trial, a crowd of people to the number of about ten thousand, gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court court and enacted demonstrations hostile to the defendants, all of which the jury could not but have known;

(j) that the defendants were tried in a county where mob hostility towards them raged with such violence that the Sheriff of said county and the Governor of the State of Alabama deemed it necessary to call out a military force to protect these defendants against a threatened lynching by the mob which assembled round the jail where they were held, and to guard them on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendants and to guard them after trial back to jail, all to prevent the threat made to lynch the defendants from being carried out;

(k) that the trial of the defendants, who with seven other negro boys, were charged with the crime of rape, alleged to have been committed against the two white women, was conducted under stress of great excitement, mob [fol. 97] hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of this county and adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which published in advance of and during the trial of the defendants the supposed details of the defendants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to vicious and degrading lynch sentiment which they roused in and fed to the people of this county and adjacent counties, thereby making it impossible for these defendants, as well as the other defendants, to have the benefit of a fair and impartial trial, and rendering the verdict of the jury and the judgment rendered thereon illegal and void; and for these reasons a new trial should be granted.

IV. The court erred in not questioning and in failing to qualify the trial jurors as to race prejudice and as to whether or not they could and would, in view of the fact that the defendants were negroes and the complain-t and prosecuting witness a white woman, give the defendants a fair, impartial and unprejudiced trial, and the court further erred in failing to call this fact to the attention of the jurors; and if it had appeared that any juror entertained a prejudice in regard to negroes or that any juror could not or would not. in view of the fact that the defendants were negroes and the complainant and prosecuting witness a white woman, give the defendants a fair, impartial and unprejudiced trial, such juror should have been disqualified and discharged from jury duty. The failure of the court in this respect was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, For this reason a new trial should be granted.

V. The exclusion of negroes from the list of jurors from which the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, and a new trial should be granted.

VI. The court erred in that it permitted the jurors to remain in the court room during the preliminary argument and discussion of the case between the court and a group of attorneys appointed by the court to represent the defendants. This argument and discussion between the court and counsel was calculated to and did prejudice the minds of the jurors. A new trial should therefore be granted.

VII. A new trial should be granted in that public senti-
[fol. 98] ment and feeling against the defendants and the crime charged and the language of the newspaper which published the same throughout the northern part of the State of Alabama and the States of Tennessee and Georgia were of such a character that the defendants could not get a fair, impartial and unbiased jury.

VIII. The verdict of the jury and judgment entered thereon are supported by no competent or sufficient legal evidence, that they are against the weight of evidence and against the law, and that all the credible evidence preponderates against the verdict of the jury and that the evidence adduced at the trial failed to establish the guilt of these defendants beyond a reasonable doubt; for these reasons, a new trial should be granted.

IX. A new trial should be granted because of evidence which has been discovered since the trial of the case tending to prove that the defendants are innocent of the charge made against them, and which said evidence the defendants did not and could not know and discover before the trial. Said newly discovered evidence will be properly presented to the court on the day of the argument of this motion for a new trial.

X. The court erred in refusing to permit defendants' counsel to interrogate the prosecuting witness, Victoria Price, touching her character and reputation as a common prostitute, and the court's refusal to allow such evidence and the interrogation of the prosecuting witness thereon was reversible error, for which a new trial should be granted.

XI. The court committed error in refusing to permit defendants' counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a vener-al disease. A new trial should therefore be granted.

XII. A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendants, although they knew of the severity with which the crime of rape is punished and the swiftness with which punishment is visited in the South, remained on the train and made no effort to flee, a circumstance which, together with their conduct on the day of their arrest and after, supports the inference of defendants' innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XIII. A new trial should be granted in that the state, although it had in its control a number of white boys who [fol. 99] were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witness to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witnesses, and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the state offer any reason for not producing these witnesses. The state's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that these boys, and especially Gilley, in the control of the state were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefitted the prosecution but would have benefited the defendants, and moreover, would have exonerated the defendants.

XIV. A new trial should be granted in that the proof in the record of the trial establishes the following: that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time this train reached Paint Rock, Alabama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however, conceding, that all this trouble occurred while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

XV. The court further erred in permitting the prosecuting attorney to put leading questions on direct examination to the State's witnesses, and for this reason a new trial should be granted.

XVI. The court erred in refusing to permit defendants' counsel to interrogate the prosecuting witness, Victoria Price, as to whether or not she was ever in jail prior to her appearance as complainant in this case; for which a new trial should be granted.

[fol. 100] XVII. A new trial should be granted in that the court's charge to the jury was unfair and prejudicial.

G. W. Chamlee, Atty. for Defendants.

[File endorsement omitted.]

The hearing of said motion as last amended was continued by the court from time to time until the 5th day of June, 1931, at which time the following proceedings thereon were had:

T. G. **Elkins**, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't know where I was, only I guess I was at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone out on the street holler "Whoopee," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that. I heard a band some time but I didn't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

I read the Scottsboro papers about the attack on these girls. I believe I read the Chattanooga papers. I think those papers said these men, or some of them had confessed their guilt.

When I was examined as a juror, I was asked questions as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't [fol. 101] say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them on parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got here. I was put on Jury No. 3. That was the jury that tried the five defendants. I was in Davis' store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house. The hosiery mill is three or four blocks from the court house. I couldn't say what time of the day the Norris and Weems jury reported. I didn't pay any attention to the time of the day. It was in the latter part of the afternoon. I didn't pay any attention to the hour.

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for. However, I saw no intention of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd off of the court house grounds. They also had them inside the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

I saw several heavily armed soldiers in the court house, three or four, I couldn't say how many, as well as out in the street, during the progress of these trials.

[fol. 102] W. G. Sartin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris case, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there were several thousand people around here. I don't know how many there was. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing. I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were soldiers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be after court had adjourned and the soldiers ready to go home; at the time I was in the court room, when it first began. I was not up here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the square. The playing of the band or the hollering did not in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began, me and Mr. H. H. Hennegan were standing [fol. 103] there talking. I don'- know what the hollering was about. When I heard the band playing, I didn't know what that was about.

Redirect examination:

Later I heard first one and another state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I sat on the jury and tried the five, I knew what this demonstration was about in the other case. Somebody had already told me but I don't know everything people tell me. When I went on the jury that tried the five negroes, Case No. 3, I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house. I didn't measure it. It is a short ways down to the corner. I cannot tell you how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollering. I do not know what that band was playing.

Recross-examination:

During the time of the trial, I did not see a demonstration about a truck with a big wheel and tire. I don't know what that was for. I did not see that truck pulling a big tire around the square.

L. R. Jones, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is L. R. Jones. I live about three miles from Bridgeport. I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court house when the jury returned its verdict in the first case tried. I was at home, or on my way home. I had left the court room, and left Scottsboro. I didn'- hear any demonstration of any sort.

J. M. **Barnes**, a witness for movants, having been duly sworn, testified as follows:

[fol. 104] Direct examination:

I live at Bridgeport. I am one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere between Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

Willie J. **Wells**, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported, in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't remember whether it was in the afternoon. I didn't have any time-piece, and don't remember what time it was.

I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I remember the questions that were asked me before they put me on the jury.

Counsel for movants then propounded to the witness the following question:

Q. What did they ask you to qualify as a juror?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Counsel for movants thereupon propounded to the witness the following question:

Q. Were you asked whether or not you held racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

[fol. 105] Richard Hill, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported, I was in town somewhere. I was outside the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the evening some time. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all around the court house and inside as well; I was not up here. I don't know as I later saw National Guardsmen in the court house. I was not back up here that evening. Later, when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass band playing after the jury report. Nobody told me what the hollering was about. I never did learn what it was about. I have heard them talking since what it was about. I heard that some time the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

Roy Wilbourne, a witness for movants, having been duly sworn, testified as follows:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I had gone home that evening when the jury reported this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported.

I don't know as I heard about the demonstration the next morning. I heard about the verdict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel of movant thereupon propounded to the witness the following question:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you had racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movants duly and legally reserved an exception.

[fol. 106] W. C. Scogin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the one that tried five of them. When the jury reported in the first one of these cases, I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't think there was a brass band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets, and playing. It could have been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house.

When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

Counsel for movants thereupon propounded to the witness the following question:

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court sustained the objection and to this ruling of the court movants duly and legally reserved an exception.

Counsel for movants then propounded to the witness the following question:

When you were qualified as a juror were you asked as to whether or not you held racial prejudice?

[fol. 107] The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

B. M. Holloway, a witness for movants, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of these negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for the demonstration. I just heard them yelling. It was generally understood by everybody that that was the reason for it. I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

Counsel for movants thereupon propounded to the witness the following question:

When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial, I heard the organ and learned the fact that it was the Ford [fol. 108] agency playing the organ. I heard they had different kinds of Ford cars going around.

Redirect examination:

I didn't see that. I was in the court room.

Counsel for movants thereupon propounded to the witness the following question:

Q. Before you went on the jury did anybody tell you what these negroes were going to be tried for?

The State objected to the question, the court sustained the objections, and to this ruling of the Court movants separately and severally reserved an exception.

C. C. Allen, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here when the jury reported the first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was out of town. I heard a little about the demonstration, but not much said about it.

I did not hear anyone of the other trials. When they tried the first case, I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles away. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

Counsel for movants thereupon propounded to the witness the following question:

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I am not a minister of the Gospel.

[fol. 109] Lee Hicks, a witness for movants, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

Counsel for movants thereupon propounded to the witness the following question:

Q. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the Court movants separately and severally reserved an exception.

LUTHER BALLARD, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the third jury, the one that tried five of them, I believe. When the jury in the first one of those cases reported, I was between here and Stevenson, or at Stevenson. I was outside of the City of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear anybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't [fol. 110] know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

JOHN VENSON, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. While the trial of these negroes was in progress here the Ford people made a demonstration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a parade here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at six o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That was about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. They broke up our demonstration, and I went over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I remember while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't think there were ten thousand. I wouldn't guess there was five thousand people at any one time on the street; I don't think so, but I don't know. The court house never was full. There was a crowd around the court house. There were National Guard officers around. I just remember while we were down there that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

[fol. 111] The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them before. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citizens from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them come in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

Redirect examination:

Guard Mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollarde, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superintendent, Secretary and Treasurer, and Pay master, respectively, and in the order in which our names are signed of The Margaret Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mill during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year.

We have this day examined the payroll records in our [fol. 112] office and find that Victoria Price was in our constant employ during the months of October, November, December, 1920, and January, February, March and April, 1930. The records show that she worked each week during the above months. We further certify that she was a good worker and her character around and in the mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time, she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. N. Reynolds, (Signed) W. M. Wellman, (Signed) J. V. Pollarde, Affiants.

State of Alabama,
Madison County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public. (Seal.)

[File endorsement omitted.]

On June 6, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits filed by defendants, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to-wit:

AFFIDAVIT OF L. L. MAYNOR

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Affidavit

STATE OF ALABAMA,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, [fol. 113] Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts, I have lived in Madison County, Alabama, and for about the last eight years, I have lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Alabama, to board and have been boarding in her home since that time. She is the mother of Ruby Bates, who, together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago.

During all this time that I was at Mrs. Bates, I was either hauling logs off of Monte Sano Mountain or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee, any time during 1929 or 1930.

Ruby Bates was a quiet, modest girl and much of the time while I was there, she would go to church and Sunday school and I never heard any question of her character up until a little while before this trouble, and that was after she had begun to associate with Victoria Price.

There are dozens if not hundreds of people in Huntsville who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

Sworn and subscribed to before me this the 6th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On June 13, 1931, the defendant Clarence Norris filed in said cause, in support of said motion for new trial, the following affidavit:

AFFIDAVIT OF CLARENCE NORRIS

STATE OF ALABAMA,
Montgomery County:

Before me, Lee L. Cawthon, a Notary Public, in and for said County and State, personally appeared Clarence Norris, made known to me as such, and having been duly sworn to speak the truth, the whole truth, and nothing but the truth, the said Clarence Norris deposes and says as follows:

[fol. 114] My name is Clarence Norris, and I am at present confined in Kilby Prison, having been tried at Scottsboro, Jackson County, Alabama, on the 6th day of April, 1931, before Judge A. E. Hawkins, and having been found guilty of rape and sentenced to death by electrocution; and I state the truth and facts to be as follows:

I was put on trial for the offense of rape in Scottsboro on April 6, 1931, before the aforesaid Judge and a jury, and testified on that trial on my own behalf.

I was represented in that court by Mr. Roddy and Mr. Milo Moody, an attorney of Scottsboro, who was appointed by the court to defend me. A short while before, I was put on the witness stand, I talked to my lawyers, who were present in a room of the court house with the other negro prisoners who were charged with the same offense, namely, Haywood Patterson, Ozie Powell, Willie Roberson, Andy

Wright, Olen Montgomery, Eugene Williams and Charlie Weems, and at that time was questioned by Mr. Moody and Mr. Roddy, and I told those lawyers at that time that I did not rape or have anything to do with either of the two white girls who were on the train, and that none of the other defendants who were charged with that offense did. On the 25th day of March, 1931, I had been on a freight train coming from Chattanooga, Tennessee, and was bound for Sheffield, Alabama, to visit my aunt, who lives there, in order to get a job. I had a job in Atlanta, Georgia, working for the Capitol Stone Company, and was left off. The only man that I knew on the freight train when I boarded it at Chattanooga was Charlie Weems, colored. I didn't know until I got off the train at Paint Rock that Charlie Weems had boarded the same train. I did not see any other negro boys on the train, and did not see any white boys on the train. Neither did I see white girls in overalls, or otherwise dressed, on the freight train, until I arrived at Paint Rock. I rode on an oil car, with my feet hanging over the side. The oil car was back toward the cab-car. I am nineteen years old, and my mother, Ida Norris, lives at Molena, Georgia. My home was in Atlanta, and I had been living there about five years, and had never been in any trouble, except that I was arrested for late hours one time and served a term of ten days hard labor at Atlanta, Georgia. I was arrested after arriving at Paint Rock by some officers, and I was taken across the country and put in jail at Scottsboro on the night that I was arrested about six o'clock. There were eight other negro boys arrested besides myself, and taken to the Scottsboro jail. About an hour after we arrived in the Scottsboro jail, there were four men who came and took [fol. 115] me away from where the other prisoners were to a cell in the jail and beat me there with sticks. I was slapped and kicked and told that if I did not tell that the other negro boys who were arrested on the train had something to do with those white girls, that they would kill me; that they would shoot me down in the court house. I was afraid of them, and told them that I would do what they said. I was asked by one of these men if the negro boys on the train did not throw the white men off, and I told them I didn't see that, and then they slapped and beat me; and then they asked me if I saw any of those negro boys on the train have anything to do with those girls, and I told them no, and they went to beating on me again. They told me I had better get up in the court house and say that, and I told them yes, I would do it. I was moved with the other prisoners from the Scottsboro jail to Gadsden jail the next day after we were put in the Scottsboro jail. We stayed in the Gadsden jail two weeks, and about two days before the trial in Scottsboro, several men came in the jail where the negro prisoners were, and beat all nine of the colored boys that had been arrested and taken off the train. They tried to make us tell that we had had something to do with the white women on the train. All of the prisoners, even after they were beaten, said they did not have anything to do with the white girls. One of the men that beat us turned to me and said, "You told me down yonder at Scottsboro jail that you would tell it," and then I told him that I would do what I told him and say in court that I saw these other prisoners have something to do with the white girls on the train; and this man told me that if I didn't do it, he was going to shoot me down in the court. When I testified in my trial at Scottsboro, I was afraid for my life, and did not there testify to the true facts. When I was on the stand testifying for myself, I stated that I was not engaged in a fight, but saw a fight in the gondola car. This was not true. I did not see any fight on the train, and did not see any fight in the gondola car; but made this statement that the negro boys and white boys were fighting in that car in order to save my life, thinking that I would be shot down if I did not make this statement. I stated in my testimony that Haywood Patterson started the fight, and that he came across the flat car where I was, him and the rest of the colored boys, and that he, Haywood Patterson, said he was going over there to run the white boys off and going to have something to do with the white girls. All of this statement was untrue; nothing of that kind happened in my presence. I did not see Haywood Patterson and other negro men come across the flat car, or any other car, and say they were going to run the white boys off and were going to have something to do with the [fol. 116] white girls. I made this statement because I was fearful of losing my life in the court room while I was testifying. I made the statement in my testimony that these negro men knew the girls were on the train and that the white boys were with the white girls on the gondola car. This statement was not true, as I did not see anything of the kind. I did not see any white girls at all, and any statement I made to the contrary on the trial was untrue and was made because I was afraid of losing my life by those who had beaten me and threatened me before hand. I did not see any white boys fall off or get off the train, and I did not ask two white boys what they were getting off the train for, and I did not get on the train to see if they were being put off. I did not get up on the box car and did not see the negroes putting the white boys off. All this statement was made up by me in the hope of saving myself from the threats which had been made. I did not see any negro boy having a knife around a white boy's neck, trying to push him off the train, and I did not see any other boy take hold of him and pull him back up in the car. I did not see any fight or trouble or difficulty on the train at all. When I testified that I saw Charlie Weems in the gondola, I was testifying to something that was untrue, as I made that up. I did not see Charlie Weems or any other negro in the gondola. I do not know what a gondola car is. I did not see any white girls in overalls in any car on that train, and I did not see any negro boys or men in any car on that train with white girls in overalls. When I answered in my testimony that I saw every one of the negro boys have something to do with the white girls after they put the white boys off the train, I was telling an untruth. I did nothing of the kind, but was testifying in order to save myself from what I thought was certain death if I did not swear this way. I was not sitting on the box car and did not see any one of these negro boys have anything to do with the white girls or rape them or do anything to them. I did not see them together at any time on that train, but testified to this on my trial because I was afraid that I would be shot down in the court room, as the men told me they would. I was never on a box car but was on an oil tank car, all the way from Chattanooga to Paint Rock. In my testimony, I stated that I saw Charlie Weems rape one of these girls, but that was not true. I saw nothing of the kind, but testified to this because I was afraid for my life under the threats which had been made and the punishment which has been inflicted on me. I testified truthfully on my trial that I didn't have a pearl-handled knife on me when I was arrested. If any of [fol. 117] the officers found such a knife on any of the boys, it was not on me, as I did not have such a knife on the train or in my pockets when I was arrested. So far as I know, of my own knowledge, no one of the negro boys raped either of the white girls. I was not with them and did not see anything of the kind. When I testified on my trial that a certain one of the negro prisoners in the court room had a knife around one of the white girl's throat, point him out in the court room, I was telling something that is not true, under the influence of the threats and fear and bodily violence that had been inflicted on me twice before the trial. I did not see any negro men or boy have a knife around the throat of any white girl on that train. I did not see any white girls lying down when I got up on the box car, and did not see any negro boy have a knife on the throat of either of them. My testimony on the trial to that effect was forced out of me by fear that I would be shot down in the court room. I did not see any negro boy or man on that train force any white girl or woman to lie down while other negro boys or men raped her, and my testimony to that effect is untrue and was forced out of me by fear for my life under the facts I have stated above. I did not see any white girls lying down when I got up on the box car, and did not see any overalls lying in the car anywhere, and my testimony to that effect on the trial is untrue; such testimony was forced out of me by fear and the threats that had been made to take my life in the court room if I did not testify to such facts. I was on the ground, off the train, when I was arrested. I got off the oil tank car and was on the ground when arrested at Paint Rock. I was on the train, but not in the gondola. My testimony to the effect that I could see the faces of the women, but could not see their bodies or clothing, was untrue, and was made under fear and on account of the threats and bodily harm I have mentioned before. So far as I know, or of my own knowledge, there was no fight between white men and negroes on the train, and no raping of white girls by any negroes; and any statement I have made to the contrary on my trial was under a sense of fear, because I was afraid they would shoot me down in the court room, as they told me. I told my lawyers that I did not see any of the negro men have anything to do with the white girls, and that was the truth; but I was afraid to tell it that way in court. I never saw any negro men or white men attack any white girls on that train, or do them any harm, and I did not see Charlie Weems ravish any white girl on that train, and did not see him about her.

[fol. 118] I am now in Kilby Prison and am not afraid of bodily harm at the hands of anybody; and the above statements I have made are true, and are made in the prison, in the presence of officer J. F. Partin, of Montgomery, Alabama, who is Deputy Warden of Kilby Prison. No inducements have been offered me to make this statement by anybody, and I have been cautioned to speak the whole truth.

Clarence (his X mark) Norris.

Sworn to and subscribed before me this 10th day of June, 1931. Lee L. Cawthon, Notary Public, Montgomery County, Alabama.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendants, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to wit:

AFFIDAVIT OF P. W. CAMPBELL

STATE OF ALABAMA,
Jackson County:

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizen of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County Sentinel, a newspaper published at Scottsboro.

Some four weeks ago, I went to Chattanooga, Tennessee, in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chattanooga concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hacket and he placed at our disposal two of his men who went with us to the part of Chattanooga where these negroes lived. After considerable effort, we located some of them with the following results: We found Asberry Clay and his wife, Savannah Clay, and Solicitor Thompson read to them the affidavits which they were said to have made. They both [fol. 119] said that there was certain statements in the affidavits which they did not make and which they did not know were in there. Especially with reference to these women living with negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which he made.

We then found Tom Landers whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping.

We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters where we talked with Mrs. Croft, Police Matron, who said that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with any offense and that if they had, she would have had some recollection of it.

On the other hand, the Police Records in Chattanooga do show that two of the Chattanooga negroes, to wit, Haywood Patterson and Roy and Andy Wright have had Police Records and the Police authorities stated that they were very bad negroes and had given them quite a great deal of trouble.

(Signed) P. W. Campbell, Affiant.

Sworn and subscribed to before me this 13th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On June 17, 1931, the State filed in said cause separately and severally the following separate and several rebutting affidavits, to-wit: Affidavit of M. L. Wann; affidavit of M. C. Thomas, affidavit of Charles F. Simmons; joint affi- [fol. 120] davits of Houston Dicus, W. H. Thomason and H. L. Parsons, which said affidavits are in words and figures as follows, to-wit:

AFFIDAVIT OF M. L. WANN

THE STATE OF ALABAMA,
Jackson County:

Before me, Louis Stewart, a Notary Public in and for said County and State, personally appeared M. L. Wann, who, being duly sworn, deposes and says.

That he is now and was on the 26th day of March, 1931, the Sheriff of Jackson County, Alabama; that I was not in Scottsboro at the time the nine negro boys were placed in jail, but arrived about one hour after they were placed in jail at Scottsboro. I found present at the jail my deputy, Charlie Simmons and Charlie Latham, together with the City Marshal, Houston Dicus, with other deputies specially deputized to guard the jail until the arrival of the soldiers.

Immediately on arrival at the jail, I had a conference with my deputies and it was decided to remove the prisoners to

Huntsville, Alabama, or Gadsden, Alabama, and I had the prisoners all handcuffed and they were marching in a body out in the hall of the jail to the top of the stairway, but on seeing that quite a little crowd had gathered below, it was decided, after a conference with my deputies, that we replace the prisoners in their cell and phone the Governor for troops, which I did. I had not heard any talk whatever from the crowd about mob violence of any kind, but out of extreme caution and for the due protection of the prisoners, I did phone the Governor to send troops at once. The prisoners were then replaced in their cell and at no time were they ever separated from each other and at no time was Clarence Norris taken out of his cell by an officer or by anyone else, but he remained with the other prisoners until they were taken charge of by the militia about twelve o'clock that night.

I have read the affidavit of the said Clarence Norris in this case and it is absolutely false from one end to the other. He was treated nicely and humanely at all times while under my charge and no complaint whatever was ever made to me about any mistreatment of any of the nine boys. I was constantly at the jail from the time of my arrival about 5:30 o'clock in the afternoon until the soldiers arrived and of my own personal knowledge the witness, Clarence Norris, was never taken from his cell, other than as above stated, during the entire time he was in my charge up to the time [fol. 121] they were turned over to the soldiers. To my certain knowledge, there was no threats made to him or any of the others during the time they were in my charge and no attempt was ever made to interview them about the alleged crime for which they were charged. My deputy, Mr. Charlie Simmons, and another deputy, C. F. Latham, and the City Marshal, Houston Dicus, and Ex-Sheriff Mack Thomas, was present during the entire time the prisoners were in jail until they were turned over to the soldiers. After the soldiers took charge of the prisoners, they kept a detachment of guards around the cell both night and day during the entire time they were in jail at Scottsboro and there was absolutely no chance for any one to interview the prisoners without their knowledge and consent, and I am quite sure the negro Clarence Norris was never taken out of his cell and treated as he alleges in his affidavit during the time he was in the jail at Scottsboro. I know this as a pure fabrication on his part and superinduced for the sole purpose of seeking notoriety without any semblance of truth or fact in his statement.

I am quite sure that all of the officers above mentioned will verify this statement and corroborate it. I never as much as discussed the charges with any of the prisoners, nor let anyone else do so other than the attorneys in the case. I never tried to exact any statement from any of them nor did I suffer anyone else to do so during the entire time I had them in charge. The first that I ever heard of any mistreatment of Clarence Norris was when I was shown his affidavit this morning. All the nine boys during the entire time they were in my charge were treated exactly as other prisoners and were given every protection that the law allows, and it was as much of a surprise to me as anyone when he admitted the guilt of his comrades on the witness stand. There was during the time the prisoners were in my charge from twelve to fifteen deputies guarding the jail and the cell in which the boys were incarcerated, and I believe that each and every one will join me in this affidavit in so far as he knows the fact.

M. L. Wann, Sheriff of Jackson County, Alabama.

Sworn and subscribed to before me this 13th day of June, 1931.

Lois Stewart, Notary Public.

[File endorsement omitted.]

[fol. 122]

Affidavit of M. O. Thomas

State of Alabama,
Jackson County:

Before me, Lois Stewart, a Notary Public in and for said County and State, personally appeared M. C. Thomas, who being by me first duly sworn, deposes and says:

I have served as Sheriff of Jackson County for two terms, the last term expiring on January 19, 1931; I was succeeded as Sheriff by M. L. Wann, the present sheriff of Jackson County. I was present at the jail when the nine negro boys were brought there by Charlie Latham, Deputy Sheriff, and citizens of Pain Rock, Alabama. I helped search the prisoners and locked them in their cells. At the time they were brought to the jail, the Sheriff was out of town and did not return until late that afternoon. I remained at the jail until after the Sheriff returned and was there helping to guard the prisoners until the troops arrived and relieved me.

I have read the affidavit of the Sheriff, M. L. Wann, and can positively state that it is true and correct so far as I have any knowledge or belief. During the time I was at the jail, prior to the arrival of the troops, I can personally state that no one interviewed the prisoners or interfered or intimidated them in any way whatever.

The statement in the affidavit of Clarence Norris that he was beaten by the officers is positively untrue as no one molested them in any way prior to the arrival of the troops. After the arrival of the Sheriff, we decided to remove them to Huntsville for safe keeping and for that purpose only removed them from their cells, handcuffed them together and placed them in the hallway of the jail, seeking an opportunity to remove them.

During that time no one interfered with them or molested them or threatened or intimidated them in any possible way, and as soon as we determined that it was not safe to remove the prisoners, they were immediately placed in their cells and the doors locked. During the time I was at the jail and while attending the trials, I saw nothing out of any person or officer which could have possibly been taken as a threat or effort at intimidation.

M. C. Thomas.

Sworn to and subscribed before me this 13th day of June, 1931. Lois Stewart, Notary Public.

[File endorsement omitted.]

[fol. 123] AFFIDAVIT OF CHARLES F. SIMMONS

THE STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public, in and for said County and State, personally appeared Charles F. Simmons, who, first being duly sworn, deposes and says:

That he is now and was at the time of the arrest and incarceration of the nine negro boys, including Clarence Norris, in the County jail at Scottsboro, Alabama, Chief Deputy Sheriff under Sheriff M. L. Wann, and was present at the jail when the negroes were brought there for incarceration and was present at the jail during the entire time the negroes were kept there until they were turned over to the Alabama National Guard.

I have carefully read the affidavit of Sheriff M. L. Wann and also the affidavit of Ex-Sheriff M. C. Thomas, and the same are absolutely correct and state the facts of the case and especially with reference to Clarence Norris. There was absolutely no disorder on the part of any one at the jail from the time the prisoners arrived until they were carried away by the National Guard and no officer, nor set of officers, nor any other men had charge of said prisoners or any one of them, to the exclusion of the others, except the officers and the special deputies appointed to assist in keeping order at the jail and guarding the prisoners. I was one of the officers and acted in that capacity and was in the jail guarding the prisoners during the entire time, and absolutely know that there was nothing done as charged in the affidavit of said Clarence Norris, which I have this day read. Clarence Norris wqs not mistreated by any person during his entire stay at the jail and no threats were made against him in any way, nor against any of the other eight negro prisoners. During the other stay of the prisoners at the jail after they were brought back from Gadsden, they were under the constant care of the National Guard and soldiers were stationed around the cell both night and day during their entire stay. I assisted the National Guard in opening the cell doors and also in putting the meals of the prisoners in their cells at meal time and at no time were they ever mistreated in any way or asked to testify about the matter by anyone in my presence.

I was the custodian of the keys to the cell in which the prisoners were placed and they were locked up in said cell under three different locks. I had the only keys to said locks and they were in my possession at the time of the arrival of the prisoners and I kept said keys until next [fol. 124] morning after they were locked up in the cells, when I turned the same over to M. L. Wann, the Sheriff of said County, and I know, personally that Clarence Norris was never taken out of said cell away from the other prisoners nor was he threatened in any way while in said cell by anyone.

Charles F. Simmons.

Sworn to and subscribed before me this 13th day of June, 1931.

Lois Stewart, Notary Public.

[File endorsement omitted.]

AFFIDAVIT OF HOUSTON DICUS, W. H. THOMASON, AND H. L. PARSONS

THE STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public in and for said County and State, personally appeared Huston Dicus, W. H. Thomason and H. L. Parsons, each being duly sworn, deposes and says:

That he was specially deputized as deputy sheriff at the time the nine negro prisoners charged with rape, were placed in the County jail at Scottsboro, Alabama, to preserve order and protect the prisoners from annoyonce and harm of any kind; that they were present from the time the prisoners were placed in jail in Scottsboro until the arrival of the National Guard that night about eleven or twelve o'clock; that they have each read the affidavits of M. L. Wann, Sheriff of said county, M. C. Thomas, ex-sheriff of said county and a deputy on the occasion, and also Charles F. Simmons, Chief Deputy to the Sheriff, and that each of said affidavits speak the truth to their personal knowledge; that they were present during the time mentioned in said affidavits and know the facts as stated in said affidavits to be true; that the said Huston Dicus further avers and testifies that he is and was at the time City Marshal for the town of Scottsboro and assisted Parsons and Thomason in preserving quiet during the time from the incarceration of the prisoners in the jail until the arrival of the National Guard and that everything was orderly and quiet and was no demonstration of violence on the part of any one, and said prisoners were never separated from the time they were incarcerated until they were [fol. 125] turned over to the National Guard of Alabama, neither were said prisoners mistreated in any way, but upon the other hand, they received the same treatment as other prisoners and also the same consideration; that each of us know it to be utterly untrue and without any foundation of fact the affidavit filed in this cause by one of the defendants, to-wit, Clarence Norris.

W. H. Thomason, Houston Dicus, H. L. Parsons.

Sworn to and subscribed before me this the 16 day of June, 1931. Lois Stewart, Notary Puplic.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendants separately and severally offered in evidence, in addition to the foregoing oral evidence, in support of their said motion, the following separate and several affidavits:

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, and affidavit of Percy Ricks and Clarence Norris. Said affidavits were admitted in evidence, and are heretofore set out in this bill of exceptions.

The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollarde; affidavit of Huston Dicus, W. H. Thomason and H. C. Parsons. Said affidavits were admitted in evidence, and are heretofore set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of said motion to set aside the verdict and judgment founded thereon and to grant defendants a new trial.

[fol. 126] On said June 22, 1931, after hearing and considering said motion, the court overruled the same, and refused to set aside the verdict of the jury and the judgment founded thereon and to grant the defendants a new trial, and to this action of the court defendants then and there, separately and severally reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendant in this cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions on the trial and proceedings in said cause, the same is accordingly signed and allowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of November, 1931.

A. E. Hawkins, Judge.

Filed November 30, 1931.

C. A. Wann, Clerk Circuit Court.

IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 124, inclusive, contain a full, true, correct and complete transcript of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein the State of Alabama was plaintiff, and Charlie Weems and Clarence Norris were defendants.

I further certify that the said defendants did obtain an appeal to the Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and seal of office this the 19th day of December, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[fols. 127 & 128] IN SUPREME COURT OF ALABAMA

Present: Chief Justice Anderson and Associate Justices Garner, Bouldin and Foster.

8th Div., 321

CHARLIE WEEMS & CLARENCE NORRIS

vs.

STATE OF ALABAMA

Jackson Circuit Court

ORDER FOR WRIT OF CERTIORARI—Jan. 14, 1932

It is ordered that a Writ of Certiorari issue to the Clerk of the Circuit Court of Jackson County, Alabama, commanding him to make and certify to this Court by Thursday of the next call of the 8th Division, January 21st, 1932, a true and correct copy of (1) the arraignment of the defendants (2) the drawing of the venire both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants in the cause of Charlie Weems and Clarence Norris vs. State of Alabama, pending in said Court.

[fol. 129] IN SUPREME COURT OF ALABAMA

WRIT OF CERTIORARI—Filed Jan. 16, 1931

THE STATE OF ALABAMA,
Judicial Department:

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-1932

To the Clerk of the Circuit Court of Jackson County, Greeting:

Whereas in a case now pending in our Supreme Court, by appeal from a judgment of said Circuit Court, between Charlie Weems and Clarence Norris, Appellants, and State of Alabama, Appellee, the said appellee has to the Supreme Court suggested, that the transcript of the record of said Circuit Court, filed in said Supreme Court on December 29th, 1931, is incomplete in this:—the same fails to set forth a full and complete copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants.

We therefore command you to make dilligent search of the records and proceedings in your office in the above cause, and certify, together with this writ, a full and complete transcript of said above named records and proceedings to our Said Supreme Court, by Thursday, January 21, 1932, at Montgomery.

Witness Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 14th day of January, 1932.

Robert F. Ligon, Clerk of the Supreme Court of Alabama.

[File endorsement omitted.]

[fol. 130] IN SUPREME COURT OF ALABAMA

RETURN TO WRIT OF CERTIORARI

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greeting:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to re-call and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Courthouse at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

[fol. 131] The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call:

Chas. Morgan, Jas H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summoning all the within named Grand Jurymen this March 30th, 1931.

M. L. Wann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

State of Alabama,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County is hereby ordered to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in [fol. 132] criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Judicial Circuit.

SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consist of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regularly drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of all jurors so drawn, both regular and special, the said list showing which are regular and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 133] Certificate to Certiorari & Appeal of Charlie Weems and Clarence Norris

State of Alabama,
Jackson County:

I, C. A. Wann, Clerk Circuit Court in and for said County and State hereby certify that foregoing pages from 1 to 5 inclusive, contain a full, true and complete record and proceedings in the case of The State of Alabama vs. Charlie Weems and Clarence Norris demanded by Certiorari by the Clerk of the Supreme Court on the 14th day of January, 1932, and the same belongs to the transcript in the above cause filed with the Clerk of the Supreme Court on December 29th, 1931; to all of which I hereby certify to the said Court of Appeals as being inadvertently left out of said transcript in the case wherein the State of Alabama was plaintiff and Clarence Norris and Charlie Weems were defendant and the same being appealed to the Supreme Court of Alabama.

Witness my hand and seal of office this the 18th day of January, 1932, at the Courthouse in Scottsboro, Alabama.

(Signed) C. A. Wann, Clerk Circuit Court. (Seal.)

[fol. 134] IN SUPREME COURT OF ALABAMA

The court met pursuant to adjournment.

Present: All the Justices.

8th Div., 321

CHARLIE WEEMS & CLARENCE NORRIS

vs.

STATE OF ALABAMA

Jackson Circuit Court

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—Jan. 21, 1932

Come the parties by attorneys, and argue and submit this cause for decision.

[fol. 135] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

JUDGMENT—March 24, 1932

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoners, Charlie

Weems alias Charles Weems, and Clarence Norris, alias Clarence Morris, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the defendants, Charlie Weems, alias Charles Weems, and Clarence Norris, alias Clarence Morris, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 13th day of May 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the bodies of said Charlie Weems alias Charles Weems, and Clarence Norris, alias Clarence Morris, until they are dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered that the Appellants Charlie Weems alias Charles Weems and Clarence Norris, alias Clarence Morris, pay the costs of appeal of this Court and of the Circuit Court.

[fol. 136] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, ALIAS, &c., CLARENCE NORRIS, ALIAS, &c.,

v.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

OPINION

THOMAS, J.:

The record in this case, number 2402 in the circuit court, shows that on the 31st day of March, 1931, the defendants, appellants here, appeared in person and by their counsel, and were duly arraigned, and entered a plea of not guilty; that the case was thereupon set for trial along with case No. 2404, State of Alabama v. Haywood Patterson, who was also jointly indicted with the appellants in this case; was set to be tried on Monday, April 6th; that the court [fol. 137] ordered that the venire for the trial should consist of one hundred jurors, including the regular jurors drawn for the week in which this case was set for trial, and twenty-five jurors specially drawn from the jury box in open court in the presence of the defendants and their counsel; that all of said jurors be summoned by the sheriff, and a list thereof be made and, together with a copy of the indictment, be served on each of the defendants. The record further shows that this order was complied with, and that such list, together with a copy of the indictment, was served on each of the defendants. This was in strict compliance with the statutes.—Code 1923, §§ 8644, 8649. See Patterson v. State and Powell, et als. v. State, MS, as to venire and setting of the causes for trial.—Whitehead v. State, 206 Ala. 288.

The motion for change of venue made in this case, and the evidence in support thereof, are identical with the motion and evidence made in the case of State v. Haywood Patterson, No. 2404, which has been fully considered in Patterson's appeal, argued and submitted along with this appeal, and what was said in that case will not be repeated here, as we are in accord with Justice Brown's and Knight's opinions of the facts on this motion and under the authorities cited and adverted to in the opinions in Patterson v. State and Powell et als. v. State, supra. The motion was denied without error.—Patterson v. State, MS; Malloy v. State, 209 Ala. 219, 96 So. 57; Riley v. State, Ib. 505, 96 So. 599; Godau v. State, 179 Ala. 27, 60 So. 908.

The indictment was in the form prescribed by the statute, and under the repeated decisions of this court was sufficient to advise the appellants of the nature and cause of the accusation, and appellants had a copy thereof. This met the requirements of the Constitution.—Malloy v. State, supra; Schwartz v. The State, 37 Ala. 460; Doss v. State, 220 Ala. 30, 32; Jinright v. State, Ib. 268; Myers et al. v. The State, 84 Ala. 11; McQuirk v. State, Ib. 435, 5 Am. St. Rep. 381. The many authorities on this point are col- [fol. 138] lected in 62 A. L. R. 1392, note.

The evidence of the State's witness, Victoria Price, to state its substance, goes to show, that on the 25th day of March, 1931, while she was riding on a freight train through Jackson County, with her girl companion, Ruby Bates, that they were riding in a "gondola car" loaded with chert or gravel; that just after the train passed Stevenson in Jackson County, Alabama, the appellants, Charlie Weems and Clarence Morris, with the aid of other negroes, forcibly stripped off her outer garment, a pair of overalls, tore off her undergarments, and forcibly ravished her; that there were twelve in the party of negroes who came upon the car and forced six of seven white boys to leave the train while it was in fast motion, by assaulting said white boys; that after said white boys were forced to leave the train, some of the negroes raped her companion, Ruby Bates, and the other raped her—six in number—and that some of them held the girls while the others accomplished their purpose; that Weems held a knife against the throat of witness, while some of the others, including Norris, forcibly had sexual intercourse with her.

On cross-examination, after this witness testified that she was married, and had not been divorced, she was asked by defendants' counsel: "Did you leave him (her husband) at Huntsville?" The court sustained the solicitor's objection to the question, and defendants excepted. This question called for immaterial testimony, and the objection was properly sustained. She was also asked by defendants' counsel: "How long had you known your husband before you married him?", and due objection was sustained. This likewise called for immaterial testimony, and the objection was properly sustained. The same is true as to the question, "Were you ever in jail before?"

[fol. 139] Dr. Bridges, whose qualification as a medical witness was conceded by the defendants' counsel, testified that he, with Dr. Lynch, the county health officer, made a physical examination of the witnesses Victoria Price and Ruby Bates on the afternoon of the alleged rape, and found bruises and scratches on their persons, but no lacerations or tears of the sexual organs, and testified to the presence in the vaginas of the two witnesses of the male germ, going to show penetration; and expressed his judgment as a physician, that "six men, one right after the other, could have had intercourse with her (Victoria Price) without lacerations. That is possible." This opinion evidence was competent.

On cross-examination of this witness, the defendants' counsel asked him: "Both of these girls admitted to you they had had sexual intercourse previous to this, didn't they?" Due objection was made to this question which was sustained. There was no evidence showing or tending to show that the defendants had sexual intercourse by and with the consent of the State's witnesses. The evidence sought was not material. Patterson v. State; Powell, et als. v. State, MS.; Griffin v. The State, 155 Ala. 88, 46 So. 481; Rice v. State of Florida, 35 Fla. 236, 17 So. 286; Story v. State, 178 Ala. 98. See, also, Bailey v. Com., 3 A. S. R. 87; 22 R. C. L. p. 1208, § 42; 52 C. J. 1079, § 109.

The same is true as to the following questions to this witness: "Both of them told you they had had sexual intercourse, one told you she had been married and the other told you she had been—." * * * "From your examination could you tell whether or not they were subject to intercourse? Were they virgins?" * * * "That you find anything in the vagina that indicated to you these girls had had or might have had gonorrhea or syphilis?" And other questions of like import. The latter question was not pertinent as to identity or the corpus delicti of the immediate offense, as was the case in Williams v. State, 139 So. 291. These inquires were beyond the controverted issues of fact being tried.

[fol. 140] Tom Taylor Rousseau testified as a witness for the State, identified the appellants as being among those taken from the train at Paint Rock—from the gondola car—also testified that he did not see the girls when they got off the train, and further testified: "I saw Victoria Price a little later. When I saw her at that time they were coming around the depot with her in a chair. She had her eyes closed and was lying over this way and they were bringing her from the depot up to town to the doctor's office. That was Victoria Price. I saw her later one time from where I was. She was still in the chair." This witness testified on cross-examination, among other things, that "One of the girls was not in condition to walk. I did not help carry her off. There was an officer toted (carried) the girl up there. They toted (carried) her off the train, a fellow named M. A. Mize. He had to carry her away from the train, unconscious. I don't know about what the doctor said about her being unconscious at that time. I was not there. I was there at the time the girl was taken off."

At this junction, defendants' counsel asked the witness: "And if he (the doctor) testified immediately after their arrival here or at Paint Rock she was not unconscious, he is mistaken about it?" The objection to this question was properly sustained. It was the province of the jury, not the witness, to say which of the two versions was true. Moreover, the question related, not only to the condition of Mrs. Price at Paint Rock, but also at Scottsboro, and this witness had not testified to her condition at Scottsboro.

[fol. 141] Jim Broadway testified as a witness for the State, that he was present at Paint Rock when Victoria Price and her companion left the train, and further, "I saw Victoria Price there. We got her off the freight train. She was on one of these gravel cars. That is known as a gondola car. There was another woman with her, the Bates girl. The Bates girl, seemed to be in fairly good shape, but the other could (not) hardly talk and couldn't walk."

The State's solicitor here asked the witness: "Did you hear them make any complaint there, either one of these girls, of the treatment they had received at the hands of these negroes?" The defendants severally objected to this question on the ground that it called for incompetent, irrelevant, immaterial and illegal testimony, and for hearsay testimony. The court ruled that the answer be limited to Victoria Price, the person named in the indictment as the victim, and the defendants again objected on the same ground. The objection being overruled, the witness answered: "I did not hear Victoria Price make any complaint, either to me or anybody else there, about the treatment she had received at the hands of these defendants over there. We sent and got a chair for Victoria Price and carried her to the doctor's office at Paint Rock."

The courts are unanimous in holding on a trial for rape and assault with intent to ravish, that it is permissible to show that the alleged victim made complaint of the outrage soon after its commission, as a circumstance to corroborate her testimony.—Barnes v. State, 88 Ala. 204, 7 So. 38; 16 A. S. R. 48, and note; 22 R. C. L. 1212, § 47. The defendants' objection was, therefore, overruled without error.

[fol. 142] Ruby Bates, the companion of Victoria Price, over defendants' objection, was allowed by the court to testify that the defendants were among those on the train; that they, with the others, came over the box car in a body and into the gondola car where the witness and her woman companion were riding, armed with pistols and knives, and assaulted the white boys and forced them to leave the train, and then seized the witness and her companion and threw them down in the car.

On cross-examination this witness testified: "I have never been married. I had a conversation with the doctor about having sexual intercourse. I am talking about the doctor after I arrived at Scottsboro, I do not remember his name. * * * I just told him to examine me and see if he could find anything wrong with me. I told him about those negroes." Counsel for the defendants thereupon asked the witness: "No, not about the negroes, but did you tell him you had intercourse before?" The court sustained the solicitor's objecton to this question, and for reasons heretofore stated, this ruling was not error.

This witness further testified on cross-examination:

"I had not said a word to these white boys when I saw the negroes coming over. Nothing had been said between either me or my companion to the white boys. They were in one end of the car and we were in the other, sitting perfectly quiet, no sort of conversation, just sat there looking at each other. When I saw the negroes coming one of these white boys looked up over the car and said: 'Look coming yonder,' and we all looked up then, and they told the white boys to [fol. 143] unload and the white boys still hadn't said nothing to us. There was one white boy out of seven left on the train. I do not (know) the names of any of the white boys. I could not tell you why they left this one. He stayed on in that gondola car. The negroes hit him but they did not put him off." Defendants' counsel then asked the witness: "They could have put him off just like they did the rest of them; there wasn't any reason for not putting him off, was there?"

This question called for a conclusion, and if it was at all material, the jury, under the facts developed, could draw the conclusion or inference.

The further testimony of this witness fully corroborated the witness Victoria Price, going to show that these girls were forcibly ravished.

Luther Morris, who was, at the time the train passed, between Scottsboro and Stevenson, at his home, testified in behalf of the State, that he observed the freight train passing. "I saw a bunch of negroes put off five white men and take charge of two girls. I saw between eight and ten negroes, and they put five white men off the train, made them get off the train. They did not throw them off; they just overpowered them and made them get off. * * * I did not hear any pistol shots. The train was making so much racket I could not hear. I figure that the train was making between thirty-five and forty miles an hour. I saw those white men get off or fall off the train. I guess I observed that and could see that train there for about four hundred yards. I was there in thirty yards of the [fol. 144] track. The kind of car on the train they were getting off was a coal car, or gravel car, you might call it."

On cross-examination this witness testified:

"I saw two women in the gondola, two white girls. The two white girls were doing their best to jump, and the negroes caught these two white girls and they were pulled back down in the car. I was standing above this train so I could get a good view. I saw all of this going on. * * * I went out to where these boys were, the two that got knocked in the head, but they were hurting so bad they could not talk. They just said: 'I am dying.' I certainly did notice wounds or bruises about them."

The State offered two more witnesses, who observed the train as it passed and saw some of the crowd on the train, and afterwards saw the white boys after they were forced off the train.

The defendant Weems testified, inter alia:

"My name is Charley Weems. I was on this freight train running between Stevenson and Paint Rock on March 25th. There were twelve of us negro boys on that train. There were seven white boys on there. I first seen the white boys when we left Chattanooga. I did not see the girls on the train till we got to Paint Rock. I got on the side of a box car at Chattanooga and crawled over to an oil tank. When the train slowed up at Main Street I came across the box car to the oil tank. When we got up to that next little town above Chattanooga, I left the oil tank and went to the gon- [fol. 145] dola I don't know what town it was. I had been out of Chattanooga about an hour or a little over. The fight between the white boys and the negroes started down here at Stevenson, after we left Stevenson. The white boys were in the gondola. The negroes got in the gondola directly after we left Stevenson. Haywood Patterson and that long yellow boy back there first went in the gondola. Three of us went over in the gondola. What prompted me to go in the gondola, Haywood Patterson had a pistol and he said 'Come on and help me get the white boys off; if you don't I am going to shoot you off.' I don't know whether any of the negroes had been quarreling. They were not on the train where I was. I was one of the three boys that went in the gondola first. I was behind Haywood Patterson. Haywood Patterson just walked up and hit this white fellow over the head with a pistol. I was not doing anything at all. I didn't have a pocket knife or nothing. I just told the white boys to get off. A fight did not start. These white boys did not fight at all; they just run and tried to get off the train. About five got off the train. I could not tell how many stayed on the train. Some of them went off toward the engine. I don't know where the girls were. I did not see the girls. I never did see the girls. I got off the train when we got to Paint Rock. I got off the train. Five boys got off the train in all. The five were me and Clarence Norris, Ozie Powell, Willie Roberson and that boy back there, Olen Montgomery, that blind boy. I had known these negroes that were with me since we left Atlanta; we left Atlanta together. I did not know the rest until we got on the road. The first time I saw these girls was when we got to Paint Rock. They [fol. 146] were getting off the train. They got off the gondola. I wasn't in the gondola they were on. I wasn't in that gondola at all. I had not been in that particular car, not where they were. I did not see the girls until they were getting off the gondola. I don't know how many gondolas were on that train; five or six on that train along in line together; some were, and some on the other side of box cars; a box car was between them. I had nothing to do with the girls at all. If anybody had anything to do with the girls I don't know nothing about it. * * * I wasn't on a gondola. I was on an oil tank. I got over in the gondola down at Stevenson. I walked over the top of the gondola. Some white fellows were in the gondola. There was gravel in that gondola. These white boys were in the car when I got in it at Stevenson. I did not jump off the box car into the gondola. I climbed down and stepped in. The car had steps on the end of it. Haywood Patterson told me to go in there and help throw them white fellows off; if I didn't he was going to shoot me off. That is Patterson (indicating). He told me why he wanted me to go along. He wanted to go in there and help throw the white fellows off. He said he was throwing them off because they had been trying to run over him down in the oil tank. Haywood Patterson had a pistol. I did not have a pistol. I saw his pistol. He went back along the train to call me to help throw the boys off. There were seven white boys on the train. We had come to Stevenson from Chattanooga before we got in there. I could not see all over the gondola and there could not have been anybody hid in there where I could not have seen them. I did not see those two girls in there. The boys were lying right [fol. 147] in the center of the gondola car. I did not see the girls at no time until I got to Paint Rock. Five boys were put off. Haywood Patterson hit one; I don't know his name, but he had on a big wide belt, and he hit him across the head with a pistol. When he hit him he did not catch hold of him. He didn't grab him. This white fellow just jumped off and said 'Yes, we will get off.' He did not fight, because the white fellow got scared of the pistol and climbed down on the side of the car and jumped off. The other fellow jumped off. They all jumped off but one. One little white boy stayed in the car and Patterson said to put him off and he done put his foot down on the side and another boy had a big knife around his throat. He did not jump off. He begged for mercy and I reached down and pulled him back on the box car. I never saw these girls at all and never had anything to do with them; never had my hands on them. I could tell the girls from the boys. Just because they had on overalls it wouldn't change their looks with me. There wasn't a soul in that car with me and Patterson except these negroes and one white boy. * * * We were all in the gondola when we got to Paint Rock. I never saw no girls in this gondola we were in at all. I first saw the girls when they came toting them through Paint Rock. They had the oldest girl in a chair coming through Paint Rock. She did not get out of the gondola I got out of. I don't know whether she got out of a gondola or not. The first I saw of either one of the girls they were bringing the oldest girl up in a chair."

[fol. 148] The defendant Norris testified, among other things:

"I was not in the gondola when this fight ocurred. I seen two boys on the flat where I was on the cross-ties. I did not have any trouble with them. I did not have a pistol or a knife. I did not leave that car I was riding on. I did not leave it at Paint Rock. I don't know who took me off the train at Paint Rock, there were so many there. I remember getting off. I got off at Paint Rock, I reckon. I did not just leave the train. They threw guns on me, the officers did. I had not been engaged in the fight at all but I seen the fight. The fight took place in the gondola car. Every one of them colored boys was fighting. They were all fighting. That one yonder, Haywood Patterson started the fight. He came across the flat car where I was on the cross-ties; him and the rest of them colored boys come across that car and said he was going over there to run the white boys off and going to have something to do with them white girls. I saw this boy that just testified before me on the stand. They came across where I was sitting down at that time. They knew the girls were on the train and the white boys with the girls on the gondola car. I had not seen the girls. I hadn't seen them till I got off this flat car I was sitting in, and seen these boys fall off the train; after he said he was going to run them off I seen them fall off the train and I asked two white boys what they were getting off the train for and he told me he did not know, and I got up on the train to see if he was putting them off, and sure enough I got up on the box car and looked where they were and the whole crowd was putting the white boys off. One had a knife around the other's neck and trying to push him off, and he wouldn't get off and the other boy took him and pulled him back up in the car. I did not have anything to do with the girls. I did [fol. 149] not have my hand on any of them. I did not hold them or anything of that sort. When I first saw the girls the train was away up the road. When I saw the girls was when I got up on the box car and looked over where he was putting the white boys off. * * * I did not get into that gondola at all. I just looked in. This Weems I was speaking about here is not my friend. I knew him. I saw him over in the gondola and I saw the girls in there, but I did not go in there. I saw that negro in there with those girls. I seen everyone of them have something to do with those girls after they put the white boys off the train. After they put the white boys off I was sitting up on the box car and I saw every one have something to do with those girls. I was sitting on top of the box car. I saw that negro just on the stand, Weems, rape one of those girls. I saw that myself. When the officers searched me they did not find anything on me. They did not find a pearl-handled knife. They did not find a pearl-handled knife on me. I did not have a knife or pistol. I did not go down in the car and I did not have my hands on the girls at all, but I saw that one rape her. They all raped her, every one of them. There wasn't any one holding the girls legs when Weems raped her, as far as I saw. The other boy sitting yonder had a knife around her throat, that one sitting on the end behind the little boy. I don't know what his name is, but he is the one that had the knife. I did not see the little one hold of her legs while this one was raping her. I did not see anybody holding her legs. I don't know who pulled off her overalls. The girls were lying down when I got up on the box car. This big one did not have a knife on her throat. That little boy sitting behind yonder—I don't know his name—is the one [fol. 150] that had a knife around her neck, making her lie down while the others raped her. I didn't see any of the negroes take her overalls off. The girls were lying down when I got up on the box car. I saw the overalls lying in the car. I did not see any step-ins. I did not get down in the gondola, never did get down in there."

The State offered evidence in rebuttal going to show that the officers, when they arrested Norris, took off his person a knife, which was identified by the witness Victoria Price as her knife, and testified that Norris took the knife from her as well as all the money she had—one dollar and fifty cents.

Appellants' insistence that the evidence does not support the verdict of guilty as charged in the indictment, cannot be sustained. The evidence, much of which has been set out above, proves the body of the crime, without dispute, and strongly tends to establish a conspiracy between those who forced the white boys to leave the train, to do the unlawful acts which immediately followed, and that they all aided and abetted therein.—22 R. C. L. 1176, § 6; State v. Burns, 82 Conn. 213, 72 Atl. 1083, 16 Ann. Cas. 465; State ex rel. Attorney-General v. Tally, Judge, &c., 102 Ala. 25.

There is no contention on the part of the defendants, that they had sexual intercourse with the alleged victim by and with her consent, express or implied, and no evidence was adduced to support such contention; therefore, evidence alleged to have been newly discovered, was not such as would authorize the granting of a new trial.—Patterson v. State, MS.; Fries v. Acme White Lead & Color Works, 201 Ala. 613. There was no error in overruling the motion for a new trial.—Patterson v. State, supra.

[fol. 151] The record shows that the defendants were represented by counsel who thoroughly cross-examined the State's witnesses, and presented such evidence as was available in their behalf, and no reason appears why the judgment should not be affirmed.

Other questions presented on motion for a new trial were fully considered in the Patterson and Powell Cases, which are here approved, and need not be repeated. There is no reversible error. The judgment of the lower court is, therefore, affirmed as to each of the defendants, Charlie Weems, alias, &c., and Clarence Norris, alias, &c.

Affirmed.

Gardner, Bouldin, Brown, Foster and Knight, JJ., concur.

Anderson, C. J., dissents.

[fol. 152] Clerk's certificate to foregoing paper omitted in printing.

[fol. 153] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

No. 321

CLARENCE NORRIS and CHARLIE WEEMS, Appellants,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING—Filed March 25, 1932

[fol. 154] [Title omitted]

Comes the appellants, Clarence Norris and Charlie Weems, and hereby makes application for a rehearing of said cause and moves the Court to set aside the judgment of affirmance rendered in said cause and to grant them a new trial, and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

G. W. Chamlee, (Signed) J. R. Brodsky, (Signed) Irving Schwab, (Signed) G. W. Chamlee, Jr., Attorneys for Appellants, Clarence Norris and Charlie Weems.

[fol. 155] [Title omitted]

Now comes the appellants, Clarence Norris and Charlie Weems, in the above cause and presents this their application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellants or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument thereof.

I

The Court erred and misconstrued appellants' assignment of errors, as set out in their brief and in this cause, and that their motion and petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled them to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative if their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have — previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 156]

II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges that the appellants "Before the finding of the indictment forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legislature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 157] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting witness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due process of law, and the judgment against them was void.

[fol. 158]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in controvention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of their legal and constitutional rights to be informed legally of the charge against them.

(Signed) G. W. Chamlee, J. R. Brodsky, Irving Schwab, Joseph Tauber, Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 159] Brief and Citations of the Law in Support of the Above and Foregoing Assignments on the Petition to Rehear in This Cause

Point I

The venue should have been changed, as set out in assignmenr No. I of this petition to rehear, because the opibion of conditional affirmance of this Court is in direct conflict with the opinion and decision handed down in the case of Downer v. Dunnaway, United States Circuit Court of Appeals, 5th Circuit, in cause No. 6286 at New Orleans, Louisiana. Also it is in conflict with the decision of the case of Moore vs. Dempsey, 261 U. S. 86, and also because it is in conflict with the case of Thompson vs. State, 117 Ala. 67, and other cases cited in our original brief in the case of Ozie Powell, et al, vs. State of Alabama filed on the original hearing of this cause.

Point II

The Court erred in its conditional judgment of affirmance, because throughout this record there is disclosed a total disregard of the legal rights of these appellants to a fair and an impartial trial, and to fue process of law, as provided for in the Constitution of the United States.

Downer vs. Dunnaway, U. S. Circuit Court of Appeals, 5th Circuit, in case No. 6289.

Moore v. Dempsey, 261 I. S. 86.

Point III

The Court erred in its conditional judgment of affirmance, because all negroes of Jackson County had been excluded from the jury box and no negroes were summoned for the grand jury that indicted the appellants, or on the trial jury which tried them.

Neal v. Delaware, 105 U. S. 370, 397;
Rogers v. Alabama, 192 U. S. 226;
Carter v. Texas, 177 U. S. 442;
Strander v. W. Va., 100 U. S. 303;
Gibson v. Miss., 162 U. S. 565;
Bush v. Kentucky, 106 U. S. —;
Ex. P. Virginia, 100 U. S. 313;
Green v. State, 73 Ala. 26;
Roberson v. State, 65 Fla. 97;
State v. Peoples, 131 N. C. 784;
Boneparte v. State, 65 Fla. 97;
Montgomery v. State, 55 *a*Fla. 97.

[fol. 160] prosecution for the same offense, and so clearly that the Court may be able to determine whether or not the facts there stated are sufficient to support a conviction."

Armour Packing Co. v. United States, 153 Fed. 116, citing Ledbetter v. U. S. 616, and other cases cited on page 545 of "Joyce on Indictments."

Point V

The Court erred in its conditional judgment of affirmance in this cause, because a new trial should be granted for the reason that members of the trial jury were not interrogated as to whether or not they bore racial prejudice against the appellants, and because of the presence of a mob at and about the Court House, and because of public demonstration prior to and during the trial, the appellants' rights were violated and the Constitution of the United States was violated, because under the Constitution it was provided that appellants should have a fair trial and be represented by counsel, and they did not have a fair trial because of the presence of a mob threatening and intimidating, and because of a parade and demonstration put on in and around the Court house at and before their trial rendered the judgment illegal and void and here refers to cases cited on pages 38 to 61 of the main briefs filed with this Honorable Court in this cause, the brief being styled Ozie Powell, et al, vs. State of Alabama, but they call to the attention of the Court the following cases:

Moore v. Dempsey, 261 U. S. 86;
Frank v. Mangrum, 237 U. S. 309;
Downer v. Dunnaway, U. S. Circuit Court of Appeals, Fifth Circuit, No. 6206 (not yet reported);
Seay v. State, 207 Ala. 453, 93 So. 403;
Holladay v. State, 100 So. (Ala.) 86;
Clayton v. State, 123 So. (Ala.) 250;
Collum v. State, 107 So. (Ala.) 35;
Bradley v. State, 21 Ala. App. 539;
110 So. 157 (affd. 215 Ala. 140);
Collier v. State, 115 Ga. 803;
State v. Wilson, 42 S. E. (N. C.) 556;
Hamilton v. State, 57 S. W. (tex.) 431;
Voughan v. State, 57 Ark. 1;
Douglas v. State, 152 So. 379;
Liggon v. State, 200 S. W. (tex.) 550;
State v. Weldon, 91 S. C. 29.

[fol. 161] We are confident that this Honorable Court misconstrued our assignments of error on the hearing of this cause and that the judgment of the Circuit Court of Jackson County should be reversed and a new trial granted and the venue changed to some other county and remanded for another trial.

Respectfully submitted.

George W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Scrieber, Attorneys for Appellants.

[fol. 162] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS,

vs.

THE STATE OF ALABAMA

APPEAL FROM JACKSON CIRCUIT COURT

ORDER OVERRULING PETITION FOR REHEARING—April 9, 1932

Application for rehearing having been filed in this case on March 25th, 1932, and each and every ground of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and the said application for rehearing be and the same is hereby overruled.

[fol. 163] IN SUPREME COURT OF ALABAMA

No. 321

CHARLIE WEEMS and CLARENCE NORRIS, Appellants,

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The petitioners, Charlie Weems and Clarence Norris, Appellants, in the above styled cause most respectfully represent that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon these petitioners and fixing May 13, 1932, as the date of their execution, and that they filed their petition for a rehearing in this Honorable Court, which was overruled and disallowed on April 9, 1932, and they desire to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon them to give them and their counsel time to comply with the legal requirements in the preparation and filing of their petition for certiorari in the Supreme Court of the United States at Washington, D. C. for the purpose of having their case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioners make this application under the provisions of Section 8(d) of the Act of Congress of February 13, 1925, (U. S. Code, title 28, section 350), and in support thereof present the following:

Your petitioners feeling themselves aggrieved by the judgment of this Court and as they are advised by their attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 164] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioners of their lives and liberty without due process of law and has denied to your petitioners the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioners although duly applied for compelling your petitioners to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioners of the charge against them with the certainty required.

(c) Your petitioners were denied an opportunity to employ counsel or to be properly represented by counsel and to prepare their case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioners their right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioners are advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 Subd. 1). Your petitioners are advised by their counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 165] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioners may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioners are advised by their attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioners respectfully ask this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 166] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioners, and your petitioners have been advised that it will take your petitioners and their counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioners respectfully ask this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioners respectfully submit that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Ozie Powell et al. vs. State of Alabama, and Haywood Patterson vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the writ of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioners respectfully submit to this Honorable Court that a stay of execution is necessary in order to give your petitioners an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. They respectfully pray that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing of a petition for a writ of certiorari and pending the consideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Charles Weems, Petitioner, (Signed) Clarence Norris, Petitioner, by (Signed) G. W. Chamblee, Atty.

[fol. 167] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Jr., Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, (Signed) Irving Schwob, Attorneys.

[fol. 168] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS,

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause it is made to appear by the petition that defendants (appellants) desire to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendants, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoners Charlie

Weems alias Charles Weems and Clarence Norrow alias Clarence Morris having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932 to June 24th, 1932. It is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendants Charlie Weems, alias Charles Weems, and Clarence Norris, alias Clarence Morris, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the bodies of said Charlie Weems alias Charles Weems and Clarence Norris alias [fol. 169] Clarence Morris until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellants pay the costs of appeal of this Court and of the Circuit Court.

[fol. 170] IN SUPREME COURT OF ALABAMA

No. 321

CHARLIE WEEMS and CLARENCE NORRIS, Appellants,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court:

You are hereby requested to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of

1. The record on appeal in said cause, a copy of which we submit herewith.
2. The opinion*s* of the Supreme Court of the State of Alabama, certified copi*es* of which we submit herewith.
3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.

4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

5. The petition for a rehearing, copy of which we submit herewith.

6. The final judgment and decision of the Supreme Court of the State of Alabama.

7. The copy of this præcipe.

8. Your certificate to the record that it is a complete record in said cause.

Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

[fol. 171] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme
FIL
MAY 2
CHARLES ELMO

Supreme Court of the United States

OCTOBER TERM, 1931.

Nos. 98, 99, 100.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT,
and OLEN MONTGOMERY,
Petitioners,
vs.
THE STATE OF ALABAMA.

HAYWOOD PATTERSON,
Petitioner,
vs.
THE STATE OF ALABAMA.

CHARLIE WEEMS and CLARENCE NORRIS,
Petitioners,
vs.
THE STATE OF ALABAMA.

PETITION AND BRIEF IN SUPPORT OF APPLICATION FOR CERTIORARI.

✓ WALTER H. POLLAK,
Attorney for Petitioners.

GALLO & ACKERMAN, Inc., 142 Liberty Street, Telephones—Rector 2-5356-7

SUBJECT INDEX.

PETITION.

PAGES

Summary statement of matter involved 2-4
  Denial of counsel 2
  Mob domination 3
  Systematic exclusion of negroes from jury 3

Reasons for allowance of writ 4-7

BRIEF.

Opinions below 8-9

Jurisdiction 9-12

Statement of cases 12-41
  Outline of course of events 13-24
    Alleged rape on March 25; arrest that day 13-14
    Mayor and local leaders "plead for peace" March 25 14
    Governor at Sheriff's request calls out National Guard March 25 15
    Special grand jury summoned and special session of court called March 26 15
    Defendants indicted March 31 15
    Whole Scottsboro bar "appointed" to defend petitioners March 31 16
    Appointment invalid 16

PAGES
Writ of arrest issued and Sheriff directed to serve jurors March 31 17
All cases set for trial April 6 17
Sheriff's return April 4 17
No counsel employed by defendants and no opportunity to employ 17
No appointment of counsel on April 6; lawyer who volunteers accepted 17-18
Change of venue denied 18
No severance demanded by defense 19
Severance obtained by prosecution 19
Defendants rearraigned April 6 19
Weems trial April 6; Patterson trial April 7; Powell trial April 8 19
Negroes excluded from juries pursuant to "custom of long standing" 20
Jurors not interrogated about race prejudice 20
Defense waives right to sum up to juries 21-22
Death sentence April 9 22
Appeal taken April 9 22
Motions for new trial 23-24

Petitioners confined under military guard 25-26
Petitioners of immature years 25
Petitioners not residents of Alabama 25
No opportunity to employ counsel or communicate with families 25
Sentiment of community and atmosphere of trials 26-33
Inflammatory publications 26
Crowds 27-28
Size 27
Temper 28
Trial court orders soldiers to search citizens for arms 28

PAGES

Military continuously present 29-30

Machine guns; tear gas bombs 30

Demonstrations 30-32

Applause at rendition of verdict 30

Music at rendition of verdict 31

Parents afraid to visit petitioners 32

Petitioners brought to trial at night under guard 32

Guilt assumed and declared by community leaders 32

Jurors share community sentiment 33-34

No safeguards thrown around jurors 33

They read newspapers 33

They hear applause 34

Internal evidence of lack of "calmness and deliberation" 35-39

Trial judge swayed by community feeling....40-41

Errors relied upon; summary of argument 41-42

Point I. Trial not fair and impartial; conviction and sentence a deprivation of liberty and life without due process: The cases identical in essence with *Moore* vs. *Dempsey* 43-54

Point II. Effective right to counsel denied and due process of law withheld 55-66

Point III. Systematic exclusion of negroes from juries and conviction before such juries a denial of equal protection 67-70

Point IV. State court's analysis of federal constitutional issues irrelevant or mistaken 71-75

Conclusion 75

Appendix 77-80

TABLE OF CASES.

PAGES
Aldridge vs. United States 63n
American Railway Express Co. vs. Levee 61n, 69, 72
Brown vs. State 74n
Carter vs. Texas 61, 67, 68, 69
Commonwealth vs. O'Keefe 55
Cooke vs. United States 12, 41, 55, 66
Downer vs. Dunaway 46n, 54, 72n
Estes vs. Commonwealth 62, 74
Frank vs. Mangum 51
Hicks vs. State 53
Jackson vs. Commonwealth 56
Kansas City Southern Railway vs. Albers Com. Co. 72n
Martin vs. Texas 42, 67, 68
Mitchell vs. Commonwealth 57, 57n
Moore vs. Dempsey 12, 35, 41, 43-51, 70, 73, 74, 75
Neal vs. Delaware 42, 67, 68, 72n
Norfolk & Western Railway Co. vs. West Virginia........ 72n
Pennoyer vs. Neff 41, 55
People vs. Czolgosz 74n
People vs. Nitti 57, 57n
Rogers vs. Alabama 61n, 67, 68, 69, 75
Sanchez vs. State 57, 57n
Sheppard vs. State 56, 64
Story vs. State 23n-24n
Strauder vs. West Virginia 53
Thompson vs. State 29n, 73n
Traux vs. Carrigan 69
Tumey vs. Ohio 12
Virginia vs. Rives 67
Wood, in re 67, 69

TEXTBOOKS.

PAGES

1 Cooley, Constitutional Limitations, 8th Ed., 1927 40n, 55, 56

Paradoxes of Legal Science, Cardozo 35

Report No. 11 of the National Commission on Law Observance and Enforcement 56n

CONSTITUTIONAL PROVISIONS AND STATUTES.

Alabama Code

- Sec. 3258 41, 77
- " 5202 61n, 77
- " 5203 61n, 77
- " 5407 20n, 78
- " 5567 16, 78
- " 5570 19n, 78
- " 5579 61, 78
- " 5580 29, 79
- " 6088 79
- " 8630 15n, 79
- " 8631 79
- " 8649 80
- Practice Rule 31 19n, 80

United States Constitution, 14th Amendment, Section 1 2, 4, 5, 6, 11, 53

United States Judicial Code, Section 237-b 9

Supreme Court of the United States

OCTOBER TERM, 1931.

Nos. 981; 982; 983.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT,
and OLEN MONTGOMERY,
Petitioners,
vs.
THE STATE OF ALABAMA.

HAYWOOD PATTERSON,
Petitioner,
vs.
THE STATE OF ALABAMA.

CHARLIE WEEMS and CLARENCE NORRIS,
Petitioners,
vs.
THE STATE OF ALABAMA.

PETITIONS FOR WRITS OF CERTIORARI.

May it please the Court:

The petitions of Ozie Powell, Willie Roberson, Andy Wright, and Olen Montgomery; and of Haywood Patterson; and of Charlie Weems and Clarence Norris, respectfully show to this Honorable Court:

A.

Summary statement of the matter involved.

Petitioners apply for certiorari upon the ground that their conviction and sentence to death for the crime of rape constituted in the circumstances of this case a deprivation of liberty and life without due process of law and a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment and a violation of their rights under this Amendment asserted in the courts of the State of Alabama and considered and denied by the Supreme Court of the State,—as appears hereinafter.

The facts are fully set forth in the statement of the case in the accompanying brief. In summary form they are as follows:

The petitioners are negroes. All were at the time of the trial and conviction of immature years (Po., 84; Pa., 115; W.,, 81*). All are ignorant or illiterate (Po., 84, 87; Pa., 115, 118; W., 81, 84). All are non-residents of the county in which they were tried and of the State of Alabama (Po., 33, 36, 37, 39; Pa., 36; W., 52, 55). They were confined in prison and under military guard from the day of the occurrence which caused their prosecution until and after the termination of their trials two weeks later (Po., 80, 172; Pa., 111-2; W., 78). They were without opportunity to communicate with their parents or with friends or relatives (Po., 80; Pa., 112; W., 78). They were without opportunity to employ counsel and in fact employed none (Po., 83; Pa., 114; W., 80). On the day all cases were set for trial, a lawyer in the court room—

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*The abbreviation Po. refers to the Record in the Powell case (No. 981 on this Court's docket), in which the Alabama Supreme Court wrote its principal opinion; Pa. refers to the Patterson Record (No. 982); W. to the Weems Record (No. 983).

who had not prepared the cases in any way—professed a willingness to aid in the defense of petitioners; the court, without consultation with petitioners, accepted the offer and made no appointment of his own (Po., 88-91; Pa., 78-82; W., 85-9). All petitioners were in fact tried on that day or on the next day or on the day thereafter (Po., 2-3; Pa., 2; W., 3). The cases of petitioners were not and could not be prepared and were not and could not be adequately presented.

Sensational and damaging articles appeared in the local press which both assumed and asserted the guilt of the petitioners (Po., 5-17; Pa., 5-17; W., 5-18). Threatening crowds gathered the day of the arrest and were present in the immediate vicinity of the court throughout the trials (Po., 84; Pa., 115; W., 81). A situation of such emergency existed that the Governor of the State called out the National Guard, which remained continuously on duty from the day of the occurrence to the conclusion of the last of the trials (Po., 65-7; Pa., 86-9; W., 93-5). The military force guarding the court during the trials was equipped with machine guns and tear gas bombs (Po., 121; Pa., 144; W., 116). The judge of the court instructed the commander of the guard to search all citizens coming into the court room or the court house grounds for arms (Po., 97; Pa., 87; W., 94). He denied to petitioners a change of venue (Po., 98; Pa., 89; W., 96). The crowds around the court house, in the court house, and in the court room, burst into applauding demonstration when verdict imposing the death penalty was returned (Pa., 140).

The juries which reported the successive verdicts were composed entirely of members of the white race; there were many negroes qualified by law for jury service in the county, but they were excluded from the juries pursuant to custom of long standing (Po., 84; Pa., 115; W., 82). Jurors were not interrogated concerning the presence or absence of race prejudice and were in fact swayed by prejudice against defendants so that they could not and did not weigh the evidence with calmness and deliberation (Po., 86; Pa., 117; W., 83).

A fair and impartial trial was impossible at the time and place, and there was no fair and impartial trial; the right to counsel was denied; petitioners were the victims of discrimination on account of race; due process and equal protection were withheld.

B.

Reasons relied on for the allowance of the writ.

The same constitutional rights were asserted by all petitioners and asserted in the same way. Petitioners in the three cases, while therefore filing separate records, print as a single document their petitions and brief. The rights under the Federal Constitution asserted and the reasons why the denial of those rights call, as petitioners submit, for the allowance of the writ, are as follows:

> The trial of petitioners in circumstances already indicated in the summary statement of the matter involved and more fully set forth in the statement of the case in the brief hereto attached—which circumstances included circumstances of mob domination—, their conviction and confinement, the jury's imposing the death penalty, and the judge's sentencing them to death (which judgment and sentence were affirmed by the court of last resort of the state), constituted a deprivation of liberty and life in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States

and a denial of the equal protection of the laws to petitioners.

The refusal to petitioners of a change of the venue of trial and the conviction of petitioners and their confinement, the jury's imposing the death penalty, and the judge's sentencing them to death (which judgment and sentence were affirmed by the court of last resort of the state), constituted a deprivation of liberty and life in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and a denial of the equal protection of the laws to petitioners.

The failure to postpone the trial of petitioners and the bringing of them to trial and the conviction and confinement of petitioners, the jury's imposing the death penalty, and the judge's sentencing them to death (which judgment and sentence were affirmed by the court of last resort of the state), constituted a deprivation of liberty and life in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and a denial of the equal protection of the laws to petitioners.

The denial of access to counsel and consultation with counsel and the failure to make a genuine appointment of counsel or, until the day for which all trials were set and the day on which the first trial was commenced, any appointment, and the denial to petitioners through counsel of opportunity to prepare and properly to present their cases and the absence of preparation and the inadequate presentation of the cases and the resultant conviction and confinement, the jury's imposing the death penalty, and the judge's sentencing petitioners to death (which judgment and sentence were affirmed by the court of last resort of the state), constituted a deprivation of liberty and life in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and a denial of the equal protection of the laws to petitioners.

The systematic exclusion, pursuant to longstanding custom, of negroes from juries in the county where trial was had and the conviction of petitioners, their confinement, the imposition of the death penalty by juries from which negroes were systematically excluded, and the judge's sentencing them to death (which judgment and sentence were affirmed by the court of last resort of the state), constituted a denial of the equal protection of the laws to petitioners and a deprivation of life and liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.*

WHEREFORE, your petitioners respectfully pray that writs of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of Alabama commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, full and complete transcripts of the records and all proceedings in the cases numbered and entitled on the docket of the Supreme Court of the State of Alabama respectively 8 Div., 322 (*Powell, et al.,* vs. *State of Alabama*); 8 Div., 320 (*Patterson* vs. *State of Alabama*); 8 Div.,

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*That these points under the Constitution of the United States were raised in the state courts and in accordance with the state practice and denied by the courts of the state, including the highest court, see Po., 109-117, 137, 145-71; Pa., 102-111, 161, 167-79; W., 106-13, 144, 152-63.

For a full showing of the preservation of the Federal rights in the State Courts see the accompanying brief, *Jurisdiction.*

321 (*Weems, et al.,* vs. *State of Alabama*), and that the said judgments of the said Supreme Court of Alabama may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just and your petitioners will ever pray.

OZIE POWELL
WILLIE ROBERSON
ANDY WRIGHT
OLEN MONTGOMERY

HAYWOOD PATTERSON

CHARLIE WEEMS
CLARENCE NORRIS

By WALTER H. POLLAK,
Counsel for Petitioners.

Supreme Court of the United States

October Term, 1931.

Ozie Powell, Willie Roberson, Andy Wright, and Olen Montgomery,
Petitioners,
vs.
The State of Alabama.

Haywood Patterson,
Petitioner,
vs.
The State of Alabama.

Charlie Weems and Clarence Norris,
Petitioners,
vs.
The State of Alabama.

BRIEF IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI.

I.

Opinions of the court below.

The opinions below have not yet been reported officially (or unofficially). They were all rendered on March 24, 1932. They appear at Po., 145; Pa., 167 and W., 152.

The chief opinion in all the cases—the only opinion that expressly alludes to the whole set of records—is in the Powell case (see Po., 170; see also W., 163).

The majority of the Alabama Supreme Court affirmed the convictions in all cases in which *certiorari* is sought.*

Anderson, C. J., dissented in all the cases,—with opinion in the Powell case (Po., 171) and without opinion in the other cases.

II.

Jurisdiction.

1.

The statutory provision sustaining the jurisdiction is Judicial Code, §237-b, as amended by Act of February 13, 1925, 43 Stat., 937.

2.

The date of the judgment to be reviewed is in all the cases March 24, 1932, on which date the Supreme Court of Alabama handed down its opinions of affirmance (Po., 145; Pa., 166; W., 151).

Petitions for rehearing were made in all cases and were in all cases denied by the Alabama Supreme Court on April 9, 1932 (Po., 179; Pa., 188; W., 171).**

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*In the Powell case the Alabama Court reversed as to one Eugene Williams, who was appellant in that Court, finding that upon the uncontradicted evidence he was under the age of 16 and under the Alabama statutes subject to prosecution only in the Juvenile Court.

**The Alabama Court in all cases fixed May 13, 1932, as the date of execution (Po., 144; Pa., 166; W., 151). The whole Court has since joined with the Chief Justice in staying execution but granted a stay only until June 24, 1932 (Po., 184; Pa., 192; W., 175),—leaving open the question of a further stay if this Court has not passed upon this application in the meantime.

3.

The nature of the case and the rulings below were such as to bring the case within the jurisdictional provision of §237-b, *supra*, as appears from the following:

(a)

The Alabama Code (§6088)* authorizes the defendant in a criminal case to include in his bill of exceptions to the appellate court the failure to grant a new trial upon grounds recited in the motion therefor, and requires that the appellate court consider a ground of error so assigned. All petitioners moved for a new trial (as fully appears under "b" hereinafter) upon the grounds, among others, that the trials and convictions constituted a denial of due process and equal protection in the respects herein urged.

The trial judge in all the cases certified that the defendants "separately and severally" filed "a true and correct bill of exceptions" and did this "within the time prescribed by law." "The same is accordingly signed and allowed of record as such by me" (Po., 137; Pa., 161; W., 144; see also Certificates of Appeal, *ibid.*).

(b)

The specific statement of federal constitutional rights appears at pages 109-113 (see also pp. 55, 83-4, 85-6) of the Powell record; 102-8 (see also pp. 57-60, 114-5, 116-7) of the Patterson record; 106-110 (see also pp. 66-8, 80-2, 83, 84) of the Weems record. The claims are:

That the denial of "a fair and impartial trial before an unbiased and unprejudiced jury" constituted a violation of rights under the Fourteenth Amendment (Po., 111; Pa., 104; W., 108); that the refusal of a change of venue was "a denial to the defendants of their rights under the Constitution of the United States, Amendment Fourteen, Section 1" (Po., 110; Pa., 104; W., 108); that the demonstration and excitement attending upon the trial constituted a denial of due process (Po., 83-4; Pa., 114-5; W., 80-1); that the overawing of the jury constituted a denial of due process (Po., 85; Pa., 116-7; W., 83); "that the defendants were compelled to go to trial represented by attorneys, who by their own admission in open Court, stated that they were not prepared," and that this was a denial of due process (Po., 83; Pa., 114; W., 80; see for an elaborate statement of the denial of counsel, Po., 110-1; Pa., 104-5; W., 108-9); that "this is especially true because in fact the defendants were neither represented by counsel retained by them or anyone on their behalf authorized to make such retainer" (Po., 83; Pa., 114; W., 80); that the trial of the defendants before juries from which qualified negroes were "by reason of custom of long standing" (Po., 84; Pa., 115; W., 82) systematically excluded was a denial of rights under the Fourteenth Amendment (Po., 113; Pa., 108; W., 110).

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*The Code sections appear in the Appendix—which is bound with this petition and brief—in their numerical order in the 1928 compilation.

(c)

The Alabama Supreme Court considered in terms whether "any right guaranteed to the defendants under the Constitution of the United States" had been "denied to the defendants in this case." It said that "the record shows that every such right of the defendants was duly observed and accorded them" (Po., 163-4).*

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*For further reference in the Court's opinion to the Federal Constitution, see Po., 149.

As we have already said, the Powell opinion is the principal and comprehensive opinion. The fact is that the briefs of all the present petitioners in the Alabama Supreme Court elaborately asserted the right to due process and equal protection.

The dissenting opinion of the Chief Justice below goes expressly upon the point that the proceedings constituted a denial of the right to a fair trial (Po., 171-4).

4.

The following cases, among others, sustain the jurisdiction:

Moore vs. *Dempsey* (261 U. S., 86) establishes that the right to a fair and impartial trial here asserted is protected by the due process of law provision of the Fourteenth Amendment; *Cooke* vs. *United States* (267 U. S., 517) settles it that due process of law requires that there be an effective right to counsel; *Tumey* vs. *Ohio* (273 U. S., 510) shows that where the record below raises these issues this Court has jurisdiction to review the decision of the state court upon direct attack.

III.

Statement of the cases.

The application is made upon undisputed facts. It is made upon the records of the proceedings and upon allegations in the petitions for new trial and in the affidavits submitted in support thereof. These petitions and affidavits the prosecution had the opportunity to contradict by filing affidavits in opposition. Upon many points not concerned with those facts upon which the constitutional issues rest the prosecution did file such affidavits.* In the occasional instances where there is some disagreement relevant to the constitutional issues between witnesses called at the trial or upon the motion for new trial and the affidavits we take those minimum facts about which there is no conflict.

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*The rule is recognized in Alabama that uncontradicted statements in affidavits for a new trial are to be accepted as true (Po., 168). It was upon the uncontradicted showing that the Williams boy was under 16 that his conviction was reversed (Po., 168-9).

Outline of course of events.

As a preliminary to the consideration of particular matters—the publications in the press, the role of the military, the demonstrations at the trial—bearing upon the fairness of the trial or the existence of an effective right to counsel, etc., we first state the course of events in chronological outline.

On the afternoon of March 25, 1931, a freight train going south from Chattanooga into Alabama had on it 7 white boys, the 9 negro boys from Tennessee and Georgia who were brought to trial below,* and some other negro boys,—according to all accounts at least 3 more, according to some still more (Po., 27, 36, 38, 41; Pa., 41, 47; W., 29, 50, 54). Both sets of boys were in a "gondola," or open, car (Po., 22, 26, 33, 38, 41). There were also on the train two white young women, Mrs. Victoria Price and Miss Ruby Bates, clad in overalls (see *e. g.*, Po., 24). According to their testimony they were also in the gondola car (Po., 22, 26).

The negro boys and the white boys began fighting, and the white boys, with the exception of a boy named Gilley were thrown off the train. A message was sent by "wire"—either by telegraph or telephone—"to get every negro off of the train" (Po., 46). The message said nothing about any molestation of the girls but did report the fight between the two sets of boys (Pa., 33; W., 40).*

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*The Alabama Supreme Court, as already stated, reversed the conviction of the Williams boy because he was under the age of 16; Roy Wright, who was 14 (see Pa., 39) was not brought to trial with these other defendants and was not convicted (see Pa., 173). The original 9 defendants have thus been reduced to 7 petitioners in this Court.

At the way-station of Paint Rock, southwest of Scottsboro, a sheriff's posse met the train "and got the bunch that was on the train" (Po., 46).** Certainly on that day, and apparently by that time, and before any reference to the girls had come into the matter, special deputy sheriffs were appointed (Po., 46).

At Paint Rock the notion got abroad that some injury had been done to the girls. They were examined by two physicians,—according to the girls' accounts "within an hour and a half of the occurrence," perhaps in a less time (W., 32, 33). They told the doctors substantially what they subsequently testified to,—that each of them was raped by six negroes. The doctors found minor bruises but no contusions, no lacerations, and no hysteria or even nervousness (Po., 28-30; Pa., 30-32; W., 33-8).

Scottsboro is the county seat of Jackson County, Alabama, and the negro boys were taken back to Scottsboro the same afternoon. As the story got abroad the excitement was naturally intense. According to the next day's local newspaper "a great crowd," "a threatening crowd" gathered (Po., 8; Pa., 7; W., 7). The "Mayor and other local leaders plead for peace and to let the law take its course" (Po., 8; Pa., 7; W., 7). According to another contemporaneous newspaper account it was due to the sheriff and a band of deputies that the crowd did not enter the jail and seize the negroes (Po., 17; Pa., 16; W., 17).

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*The message was apparently a telegram (Po., 46, but see Pa., 33). It was not produced at the trial but there was no dispute as to its contents.

**That is, the posse seized all who were on the train at that time. Mrs. Price and Miss Bates testified all through the trials that they were raped by all the 9 negroes apprehended and by 3 others,—6 boys assailing each one. The other 3 were not apprehended or brought to trial. According to other witnesses there were 14 or more negroes on the train at the time of the fighting between the two sets of boys (*supra*, p. 13).

The sheriff on the same day requested the Governor to call out the National Guard (Po., 8; Pa., 7; W., 7). At 9 o'clock in the evening the Adjutant General, acting by the Governor's order, telephoned from Montgomery to Major Starnes at Guntersville to take hold of the situation with his men (Po., 96; Pa., 87; W., 94). Major Starnes with other officers and 3 companies of the National Guard arrived at Scottsboro within 3 hours after the call (Po., 8; Pa., 7; W., 7).

Thereafter the prisoners were continuously under Major Starnes' guard. For their protection he employed "picked men" (Po., 96; Pa., 87; W., 94). They were confined until the trial in prison at Gadsden (Po., 97; Pa., 87; W., 94-5). They had no communication with their friends or families (Po., 80, 76-7; Pa., 112, 98-9; W., 78).

On March 26 Circuit Judge Hawkins summoned the Grand Jury to reconvene and called a special session of the Circuit Court (Po., 139-41; Pa., 162-4; W., 147-9). All subsequent proceedings were by a special Grand Jury,* a special venire of the petit jury and at a special session of the Circuit Court of Jackson County.

On March 31 all defendants were indicted (Po., 1; Pa., 1; W., 1). They were all subsequently brought to trial for an alleged rape on Victoria Price, effected in concert. Four indictments were, however, at this time placed against each defendant: this collective indictment in the Price case; a similar collective indictment in the Bates case, and two individual indictments in the cases respectively of Mrs. Price and Miss Bates. (For a summary of this day's proceedings see Po., 10-14; Pa., 9-13; W., 9-13).

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*No objection "can be taken to the formation of a special grand jury summoned by the direction of the court" (Alabama Code, §8630, Appendix).

There was a form of arraignment on March 31 (Po., 141; Pa., 164; W., 149), and allusion is made thereto in the opinions of the majority (Po., 149; Pa., 170; W., 152). At all events, as we shall see, the defendants were definitively arraigned on April 6, the day the first of the trials commenced.

"For the purpose of arraigning the defendants," Judge Hawkins purported to appoint all the members of the Scottsboro bar (Po., 88; Pa., 79; W., 86).* He "anticipated" "them to continue to help them if no counsel appears" (Po., 88; Pa., 79; W., 86).

The appointment was invalid under the Alabama law, which permits an appointment of "not exceeding two" (Alabama Code, §5567, quoted in Appendix). Indeed, it is said in affidavits, and not contradicted, that the Judge "released" all these lawyers from this appointment (Po., 83; Pa., 114-5; W., 81). And it is shown by the record that one of the lawyers—a member, according to the Chief Justice, of "one of the leading, if not the leading, firm" (Po., 172)—thereafter joined the pros-

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*The minutes of March 31 show the indictment of that date but there is no reference to an appointment of counsel; there is a recital of appearance "represented by counsel" (Po., 141; Pa., 164; W., 149). That definitely the defendants never *employed* any counsel until after the trials were over and that the only proceedings that even in the view of the majority of the court below constituted an *appointment* of counsel occurred on April 6, see *infra*, pages 17-18; that after these proceedings of April 6 defendants were arraigned over again, see W., 99, 3; Pa., 2; Po. 3.

ecution as special counsel and actively participated in all the trials.*

On March 31 the Court set the trial of all cases for April 6 (Po., 141; Pa., 164; W., 149).

The same day a writ of arrest issued (Po., 2; Pa., 1-2; W., 2). The sheriff was directed to serve the jurors for trial on the 6th and to make a return showing the service. This return he made on Saturday, April 4 (Po., 142; Pa., 165; W., 150).

All the cases as just stated were set for trial on Monday, April 6. None of the defendants had up to that time employed counsel or had any opportunity to employ counsel. Nor had the parents of any of them (Po., 80, 83, 76; Pa., 111-2, 114-5, 98; W., 78, 80).

The only way fully to get the flavor of the proceedings—crucially important upon this petition—in relation to the appointment of counsel on April 6, is to read them in full. They appear in identical language at Po., 87-92; Pa., 78-82; and W., 85-9:

There had evidently been some notion that a Mr. Roddy of Chattanooga might appear for the boys (Po., 11-12; Pa., 10-11; W., 11). Because of this the Court hesitated to "impose" upon local counsel (Po., 89; Pa., 79; W., 86). Mr. Roddy, however, declared, "I don't appear as counsel," but "I would like to appear along with counsel that your Honor has indicated you would appoint." He explained: "They have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested." "I think the boys would be better off if I stepped entirely out of the case." Mr. Roddy then said flatly,

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*For Mr. Proctor's statement that he felt free to do this and the trial Court's acquiescence, see Po., 91; Pa., 81-2; W., 88-9.

"I would like for your Honor to go ahead and appoint counsel."

The Court, however, still hesitated, saying to Mr. Roddy, "If you appear for these defendants then I will not appoint counsel." A member of the local bar, Mr. Moody, then said that, "of course, if your Honor proposes to appoint us,* I am willing to go on with it." Mr. Roddy repeated that he would not assume the responsibility of trial, but "if there is anything I can do to be of help to them, I will be glad to do it." Mr. Moody said, "I am willing to go ahead and help Mr. Roddy in anything I can do under the circumstances," and the Court answered, "All right, all the lawyers that will."

Mr. Roddy handed up a half-page petition for a change of venue with exhibits setting forth articles in the Jackson County Sentinel published in Scottsboro, and in a Chattanooga and a Montgomery paper (Po., 92, 4-17; Pa., 82, 3-17; W., 89, 4-18). The Court heard upon this question only two persons, both of whom happened to be present in the court room,—Sheriff Wann and Major Starnes of the National Guard (Po., 18-21; Pa., 17-20; W., 18-21).** Judge Hawkins inquired whether there was "anything else for the defendants" (Po., 98; Pa., 89; W., 96) and Mr. Roddy said, "No." The Court then ruled: "Well, the motion is overruled, gentlemen" (Po., 98; Pa., 89; W., 96). The defendants excepted (Po., 21, 98; Pa., 20, 89; W., 22, 96).

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*Both Mr. Moody and the Court, even on April 6, seemed to have had the notion that a general appointment of the whole body of members of the local bar might be valid. See the Court's reference to "imposing on you all" (Po., 89; Pa., 79; W., 86).

**For the same testimony set forth more fully in question and answer form, see Po., 93-8; Pa., 83-9; W., 90-5,—exhibits on motion for new trial.

The prosecutor asked the defense whether it "demanded" a severance, and Mr. Roddy said, "No" (Po., 99; Pa., 89; W., 96).*

The Court then inquired of the prosecutor whether *he* wished a severance, and the prosecutor asked for one and in the Court's discretion obtained it (W., 96-7).** In the subsequent trials the defense again demanded no severance (Pa., 20; Po., 21). But the prosecution did get a severance of the case of Patterson, the leader of the boys, from the others (Pa., 20), and also got a severance of the case of Powell and his four co-defendants from that of the 14-year-old Roy Wright (Po., 21).

There was, as we have said, some sort of arraignment on March 31. But each defendant was separately and "duly arraigned" at the beginning of his trial,—on April 6, 7 and 8 (W., 99, 3; Pa., 2; Po., 3).

There was no motion for a continuance in any of the cases. The trial of Weems and Norris was commenced on April 6 and concluded on April 7 (W., 3; Pa., 2, 27); the trial of Patterson was commenced on the 7th and was concluded on the 8th (Pa., 2, 41; Po., 3-4); the trial of Powell and his four co-defendants was commenced and concluded on the 8th (Po., 3-4).

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*The Alabama Code (§5570) provides that "when two or more defendants are jointly indicted, they may be tried either jointly or separately, as they may elect." Practice Rule 31 is concerned with the mechanics of this right (both appear in the Appendix; see also Po., 150).

**The prosecutor elected to try in the first case two of the older boys, Norris and Weems. His first desire was to try Roy Wright with them. This boy was, as we have said, 14 years old, and his youth was apparent. The Court, in order to avoid a delay while the boy's age was being definitely established, suggested that he be tried later. And he was not in fact tried with any of these defendants (Po., 99; Pa., 89-90; W., 96-7).

There were verdicts of guilty in all the cases, and the juries imposed the death penalty upon all the boys.*

The juries that found these verdicts and imposed these penalties were composed exclusively of members of the white race. Although "a large number of negro landowners were qualified jurors," "there was not one negro selected for the entire trial,"—the exclusion being "by reason of a custom of long standing" (Po., 84, not denied; Pa., 115, not denied; W., 82, not denied).

The record does not show what interrogation, if any, was given to the jurors before they were accepted for service. It does, however, show that the jurors were not, as a regular thing certainly, asked whether they entertained a prejudice against negroes. This fact is flatly charged both in the petition for a new trial (Po., 112-3; Pa., 107-8; W., 110) and in the affidavits in support thereof (Po., 86; Pa., 117; W., 83). It is undenied in the answering affidavits. Upon a hearing held in open court on the motion for a new trial, at which those jurors who participated in the third trial were called as witnesses, the State systematically and successfully objected to the question whether they were interrogated about race prejudice (Po., 123-4, 125, 126, *et seq.;* Pa., 147, 148, 150, *et seq.;* W., 119, 120, 122, *et seq.*).**

There are a handful of exceptions to rulings on evidence in the Weems case,—in every instance but one to the sustaining of objection to a question put on cross-examination; there are 4 exceptions in the Patterson case; there are 2 in the Powell case.*

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*The penalty for rape in Alabama may be, "at the discretion of the jury," from 10 years imprisonment to death (Alabama Code, §5407, Appendix; and see the reference to this matter in the dissenting opinion of Anderson, C. J., in the Powell case, Po., 173).

**It could be stated unqualifiedly that *no* juror was interrogated upon this subject, were it not for the fact that the juror Elkins intimated a contrary recollection (Po., 119; Pa., 142; W., 114). He added, however, that he "couldn't say positively who asked that question" and "I don't remember just what the question was about."

The only witnesses for the defense called in any of the cases were negroes under indictment for the crime charged. In the two cases first tried the calling of witnesses themselves under prosecution resulted in surprise damaging to the cause of one defendant or of the sole defendant. Norris testified in the Weems case that there had been raping by the other negro boys (W., 56);** the boy Roy Wright gave like testimony in the Patterson case (Pa., 38-41).

The defense, according to Mr. Roddy's statement, served certain persons whom it intended to call as witnesses (W., 97; Pa., 90-1; Po., 100). He expressed a desire to be assured that these witnesses would be produced. And the Court purported to give him what assistance it could, except in the case of one person, Mr. Ames, who seemed to be personally known to the Judge and whom the Judge understood to be ill (W., 97; Pa., 91; Po., 100). There is no further allusion to these witnesses nor any explanation for their non-appearance.

The record makes no reference to any opening address for the defense in any case, nor to any closing address. In two cases the record shows affirmatively that the defense, in the presence of the jury, elected not to sum up to the jury (Po., 48; W., 59). In the first case "defendant's counsel stated to the Court that they did not care to argue the case to the jury, but counsel for the State stated that they did wish to argue the case to the jury." "At the conclusion of said argument of counsel for the State to the jury, counsel for defendants stated that they still did not wish to argue the case to the jury," and the Court "permitted counsel for the State to further argue the case to the jury."

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*The opinions discuss these exceptions respectively at W., 153-8; Pa., 171, and Po., 160.

**He subsequently recanted this testimony (W., 130-5).

The Court's charges in the three cases were stereotyped and practically identical (W., 60-3; Pa., 50-3; Po., 48-53). He told the first jury: "Let me have your attention for a few moments and then you will have this case" (W., 60). So too he asked the second jury to "let me have your attention for a few moments and we will finish the trial of this case" (Pa., 50).

In no case did counsel who purported to appear for defendants take any exceptions to the charge or submit any charges of their own (W., 63; Pa., 53; Po., 53).

On April 9 all defendants were sentenced to death. None of them said anything as a reason why sentence should not be imposed upon him,—not even the 14 year old boy Williams, nor Mr. Roddy or Mr. Moody in his behalf (Po., 3; Pa., 3; W., 3).* Execution was set for July 10 in all cases (Po., 3; Pa., 3; W., 3). But appeal was on April 9 taken to the Alabama Supreme Court and the sentences were suspended pending its disposition (Po., 3; Pa., 3; W., 3). Mr. Roddy and Mr. Moody at this time filed a motion of two paragraphs to set aside the verdict and for a new trial (Po., 53; Pa., 53-4; W., 63-4).

The death warrants were written on April 18 (Po., 3; Pa., 3; W., 3).

* * *

In the course of the next few weeks the families of defendants employed for them General Chamlee of Chattanooga (Po., 75; Pa., 97; W., 73). "By permission of the Court" the motion theretofore made for a new trial was amended by General Chamlee and a new motion with copious affidavits filed on May 6 (Po., 53-7; Pa., 54-63; W., 64-8).

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*Mr. Roddy did subsequently make an affidavit confirming that Williams was under the age of 16 (Po., 117).

On June 5 the application for a new trial was somewhat expanded and a second amended motion filed (Po., 108-17; Pa., 102-111;* W., 106-113). This motion inmotion and some others. It was the amended motions for a new trial that asserted, and the petitions and supporting affidavits that laid the factual foundations for, the claims of constitutional right.

The defense at various dates after June 5, submitted numerous affidavits in opposition (Po., 136; Pa., 160; W., 143). The State's affidavits were essentially concerned with the character of the girls,—specifically with the point whether or not they had, as charged in the moving affidavits (Pa., 63-77, 133-7; Po., 102-5; W., 99-103), committed acts of prostitution with negro men and had the reputation of having done so (Pa., 156-60; Po., 132-6; W., 127-30, 135-7).** The prosecution also interposed affi-

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*The second amended motion for a new trial in the Patterson case was filed on May 19 (Pa., 102).

**The Alabama rules on this subject (as expounded in *Story* vs. *State*, 178 Ala., 98, collecting earlier authorities, and in the opinions below) are as follows:

Recognizing that "in other jurisdictions the rule is different" (178 Ala., at 101), the Alabama court holds that evidence of particular acts of unchastity will not be received. Nor will cross examination of the prosecutrix concerning particular acts be permitted. It was in fact denied in the cases at bar and the ruling held not error (Pa., 171; see also W., 154-5). Evidence of general reputation for unchastity will however be received.

The *Story* case moreover noted in forceful language that a white woman's committing acts of prostitution among negroes argued a peculiar depravity, and evidence of a reputation therefor had a high rele-

(*Footnote continued on next page.*)

davits denying charges of maltreatment of defendant Norris in prison (W., 137-43).* The prosecution thus, as we have said, left wholly uncontradicted the allegations in the petition and moving affidavits on which were rested the contentions that fair trial had been withheld, the right to counsel denied and race discrimination practiced.

On June 22 "the final hearing of said motion for new trial as last amended" was had (Po., 136; Pa., 160; W., 143). On the same day the motion was in all the cases denied (Po., 137; Pa., 161; W., 144); appeal was taken from the denial (Certificate of Appeal, Po., 137; Pa., 161; W., 144).

We have stated in general outline the course of proceedings. It is, as we have noted, against the background of other facts—the quality and circumstances of the defendants themselves; the atmosphere of the place at the time as reflected in the press, in the crowds, in the display of military force; the effect of these matters upon the jury—that the question arises whether or not their trial was in the constitutional sense fair and the right to counsel in an effective sense maintained. To the development of these matters we now turn.

(*Footnote continued from p.* 23.)

vancy. It accordingly reversed a conviction of a negro for alleged rape upon a white woman because of the exclusion of such evidence.

The *Story* decision indicated that such evidence was admissible only on the issue of consent, and in the cases at bar the court below definitively so held. It therefore ruled that evidence of acts of prostitution on the part of the two girls with negroes was immaterial because the negroes denied all intercourse with the white women (Po., 163; Pa., 179; W., 163).

*The defense filed on these motions an affidavit by one Ricks, who was on the train throughout the whole trip from Chattanooga south. He said that the girls were not in the open gondola car in which they said they were, in which the colored boys were, and in which the fight between the boys occurred, but were in a closed box car (Po., 107-8; Pa., 139; W., 105). The prosecution made no attempt to impeach Mr. Ricks or his affidavit.

Petitioners and the circumstances of their confinement before and during the trials.

Petitioners are, most of them, illiterate, all of them ignorant (Po., 5, 84; Pa., 4, 115; W., 4, 81). All of them are "immature in years" (Po., 84; Pa., 115, 99; W., 81). Just how immature we do not in all cases know. Of those whose ages we have, the oldest was at the time of the trial 19 (Pa., 42, 43). Patterson who seems to have been the recognized leader (Pa., 42, 47), and who as such was tried separately, was "under 21 years of age" (Pa., 99).

None of the defendants lived in Scottsboro, in Jackson County or in the State of Alabama. Patterson and Wright had their homes in Chattanooga (Pa., 36; Po., 37); Roberson in Memphis (Po., 36); Weems, Norris and Powell in Atlanta (W., 52, 55; Po., 33); Montgomery in Monroe, Ga. (Po., 39).

All were continuously in confinement under military guard from the evening of March 25, to and through the trials,—for a day in Scottsboro, and generally in Gadsden (Po., 80; Pa., 111-2; W., 78).

Petitioners thus describe their condition on the day trial started: They "had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinsfolks or friends and had no chance to procure witnesses and no opportunity to make bond or to communicate with friends on the outside of the jail" (Po., 80; Pa., 112; W., 78).* The father of the Patterson boy, the mother of the Williams boy and the mother of the two Wright boys recite that they "were not permitted to see" their sons during their confinement (Po., 77; Pa., 99). They were "afraid to go to Scottsboro" and "afraid to go to Gadsden" (Pa., 99, 100, 102; Po., 77, 78, 79; W., 74, 75, 77).

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*The prosecution had abundant opportunity to contradict allegations concerning the circumstances of the prisoners' confinement, and did in numerous affidavits purport to contradict allegations much less significant concerning the supposed maltreatment of a particular prisoner (see the succession of affidavits appearing in W., 137-43).

Sentiment of community and atmosphere of trials.

The charged crime was rape. It was rape upon white girls by negroes. "The character of the crime was such as to arouse the indignation of the people, not only in Jackson and the adjoining counties, but everywhere, where womanhood is revered and the sanctity of their persons is respected" (Po., 156).

The press. The articles in the local newspaper, beginning on March 26, the day after the occurrence, and culminating in an editorial on April 3, the Friday before the Monday on which the trials commenced, both reflect and could not have failed to intensify local feeling (W., 5-18; Po., 5-17; Pa., 5-17). Because the Court will, as we believe, read them—and because the Alabama Supreme Court recognized and indeed declared their quality as "sensational and damaging" (Po., 153)—we refrain, in the interest of brevity, from extended quotation or even summary here. But observe the implications of the sentences in the first article—under a 7 headline spread—declaring that "this crime stands without parallel in crime history" and continuing:

> "Calm thinking citizens last night realized that *while* this was the most atrocious crime charged in our county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by legal process" (Po., 8-9; Pa., 8; W., 8; our italics).

Crowds. "Such a happening," as the Alabama Supreme Court remarks (Po., 154), "made the basis of the charge against the defendants, was calculated to draw to Scottsboro on the occasion of the trial, large crowds. It would be surprising if it did not." Sheriff Wann testifying on April 6, was put this question and gave this answer concerning conditions as they existed the day the trials commenced:

> "Q. And there is a great throng around this court house right now that would come in if you did not have the troops?
>
> A. Yes, sir; they are from different counties here today" (Po., 95; Pa., 85; W., 92).*

Numbers are notoriously difficult to estimate. The only clear facts as to the size of the crowd at the trials are the following:

Scottsboro had in 1930 a population of 2,304.** The statement in the motion for new trial that a crowd of 10,000 was gathered in Scottsboro at the trials is not contradicted in the opposing affidavits (Po., 111; Pa., 105; W., 109). Mr. Venson, a demonstrator of Ford cars, called as a witness for the State in opposition to the motion for a new trial, knows "there was a big crowd." He "doesn't think there were 10,000." He "wouldn't guess there was 5,000 people at any one time on the street; I don't think so, but I don't know." "There was a crowd around the court house" (Po., 131; Pa., 154-5; W., 126).

Certain it is that the Ford Motor Company found it worth while on Monday, the 6th, to order Mr. Venson

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*The Sentinel on March 26 applied the same adjective, "*great*," to "the crowd gathered at the jail" on March 25 (Po., 8; Pa., 7; W., 7). For the trial it predicted a "*tremendous* crowd" (Po., 15; Pa., 14; W., 16).

**15th Census, Vol. I, page 85.

to bring on, for Tuesday, a demonstration of "about 28 trucks,"—"a Ford caravan of commercial trucks" (Po., 130-1; Pa., 154; W., 126).

The *temper* of the crowd is revealed:

The Sentinel of March 26—speaking of the day before, the day of the alleged occurrence and of the arrest—tells us not only that the crowd "gathered at the jail," which Mayor Snodgrass and other local leaders addressed, was a "great crowd" but that it was a "threatening crowd" (Po., 8; Pa., 7; W., 7).* The Montgomery Advertiser, also writing of the events of March 25, declared in an editorial that but for the sheriff's prompt action "those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls" (Po., 17; Pa., 16; W., 17).**

The estimate that the responsible officials at the time put upon the temper of the crowds is known and shown:

Mayor Snodgrass of Scottsboro "plead for peace"; Sheriff Wann of Jackson County called upon the Governor of the State to order out the National Guard; Judge Hawkins of the Circuit Court instructed the commanding officer of the National Guard unit at the trial to search for arms citizens coming into the court room,—even into the court house grounds (Starnes, Po., 96-7; Pa., 128; W., 94).

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*"The Mayor and public officials had to make speeches to try to persuade the mob to adjourn" (Po., 84; Pa., 115; W., 81). There is no denial from the Mayor or from any public official or from anybody.

**The Alabama Supreme Court concluded that because of the absence of formal proof that Chattanooga papers or even papers published in Montgomery, Alabama, circulated in Jackson County, such publications were, in the consideration of the motion for change of venue, entitled to "little weight" (Pa., 168). But the editorial published in the capital of the state is on any theory significant as a contemporaneous estimate of the situation.

The military. "Every step that was taken from the arrest and arraignment to the sentence was accompanied by the military," says the Chief Justice,—and he finds the circumstance profoundly significant (Po., 172). Alabama legislation certifies that the Chief Justice was right in his appraisal:

> "The trial judge may, with the consent of the defendant, ex mero motu, direct and order a change of venue as is authorized in the preceding section, whenever in his judgment there is danger of mob violence, and it is advisable to have a military guard to protect the defendant from mob violence" (Alabama Code, §5580; Appendix).*

The following summarizes the state of the record as to "the danger of mob violence" and the need of "protecting the defendants":

Sheriff Wann on the day the trials commenced was asked and answered as follows:

> "Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?
>
> A. Yes, sir" (Po., 94; Pa., 125; W., 91).

Major Starnes—also on the day the trials commenced—was asked whether his "units of the National Guard have protected" the defendants, and "have been with them on every appearance they have made in this court house." "That is correct," he answered. "Every time it was necessary" (Po., 97; Pa., 128; W., 94).**

The record shows the size and equipment of the military force. "A picked group of twenty-five enlisted men

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*See also the strong declaration of the significance of the military's being called out in a rape case in *Thompson* vs. *State,* 117 Ala., 67.

**And see the reference in the Powell opinion to the Sheriff's testimony that the guard was called "to protect the defendants" (Po., 151).

(*Footnote continued on next page.*)

and two officers from two of my companies" was employed "to bring these defendants over for arraignment," Major Starnes tells us (Po., 96; Pa., 127; W., 94). April 6, the day the trials commenced, Major Starnes had with him about 10 officers and over 100 enlisted men. There were "five units represented" (Starnes, Po., 96; Pa., 127; W., 93).

The situation was no less tense on the last day, April 8. A member of the third jury says of the trial, "I think there were eight machine guns around here." "There were some boxes of tear bombs sitting around" (Po., 121; Pa., 144; W., 116).*

Demonstrations. The National Guard did successfully prevent overt acts of violence against the prisoners. It could not prevent demonstrations of public feeling. The verdict in the Weems case determined the result as to two defendants. It foreshadowed the result as to Patterson, then on trial, and the five defendants to be tried the next day. Upon the report of the jury imposing the death penalty "there was a demonstration in the court house by citizens clapping their hands and hollering and shouting and soon thereafter a demonstration broke out on the streets of Scottsboro," say the affidavits in support of the motion for a new trial (Po., 81; Pa., 112; W., 79). These statements are not contradicted. They are on the contrary confirmed by Major Starnes and Captain Fricke,—who was in immediate charge of the military in the court room and who heard

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(*Footnote continued from p. 29.*)

So too, the Special Deputy Sheriffs, who united in an affidavit in opposition to the motion for a new trial, explained that their function was "to protect the prisoners from annoyance and harm of any kind" (W., 142).

*The Guard did not confine itself to police duty in scattered squads. It had guard mount in the evening (Po., 131; Pa., 155; W., 126).

"the applause in the court room" (Pa., 141). They are confirmed too by the testimony of persons waiting to be called as jurors in the third trial,—persons who were in fact called as jurors in that trial (Po., 118, 120, 124, 125, *et seq.;* see *infra,* p. 34).

These statements, thus confirmed, were accepted by the majority opinion of the Alabama Supreme Court in the Patterson case (Pa., 177).*

One of the few points at which there is controversy over the facts concerns the part played by a band on the afternoon the Weems verdict—the first of the verdicts—came in. We rest the argumentation in this brief, as we have already said, upon facts undisputed and therefore where there is dispute upon minimum facts. We summarize however the discordant statements in order to make clear what the minimum facts are:

The defense in the affidavits supporting its motions for a new trial set forth in detail that at the time the Weems jury reported, the Hosiery Mill band paraded and played such tunes as "Hail, Hail, the Gang's All Here" and "There'll be a Hot Time in the Old Town Tonight" (Pa., 113; Po., 82; W., 80). The State's affidavits did not contradict or qualify these statements. Upon the hearing in open court upon the motion for new trial the State produced no witness from the band. It did produce Mr. Venson, the demonstrator of Ford cars. He testified that while there was noise on this occasion, it was caused by his use of a gramophone with an amplifier. The Hosiery Mill band did play, he said, but it was later in the afternoon,—at six o'clock when the National Guard had its guard mount (Pa., 154-5; Po., 130-1; W., 126-7).

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*The Court, however, adopts a rule of practice which precludes the proving of such matters by "evidence *aliunde,*" and therefore disregards the affidavits and evidence.

The minimum facts thus are that there was music in the streets when the verdict came in; that the Hosiery Mill band did perform that afternoon; that the tunes played were tunes like the tunes named or the very tunes.

Atmosphere is elusive,—difficult after the event to recapture. We have tried so far as possible to classify the direct evidence. It remains to note the significance of certain circumstances or events that we have not found it possible to group under particular captions.

The defendants were boys on trial for their lives. The press was full of the danger of their position. Yet no member of their families visited them in Scottsboro or even in Gadsden, 40 miles away. "Colored people," they were "afraid to go to Scottsboro," "afraid to go to Gadsden" (*supra*, p. 26).*

Major Starnes had, on April 6, a large force in Scottsboro with machine guns and tear gas bombs. He had a "picked group" for the immediate protection of the prisoners. With all these precautions it was thought wise to carry the prisoners from Gadsden in the quietest hours of the night—they "arrived here at 5:15 this morning" (Starnes, April 6, Po., 97; Pa., 88; W., 95).

Unofficial and even official expression asserted or—what for our present purpose is more significant—*assumed* the guilt of the defendants:

It was because the evidence, as early as March 25, was accepted as "so conclusive as to be almost perfect" that "calm thinking citizens" came to the conclusion

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*These affiants requested that even the motion for a new trial be heard elsewhere than in Scottsboro (Po., 79-80; Pa., 102; W., 77).

"that the ends of justice could be best served by legal process" (*supra*, p. 26).*

Major Starnes had it as his duty to protect the prisoners and did protect them. But even this official on the morning of April 6, before one item of evidence had been presented in open court, referred in testimony publicly given to "the attack" as having "occurred" (Po., 96; Pa., 87; W., 94).

Community sentiment shared by juries and reflected in verdicts.

Jackson County is a rural community of about 35,000 inhabitants (15th Census, vol. 1, p. 76). A jury drawn from a community so small and so closely knit must reflect community feeling. And there is affirmative evidence that the regular jury and the special venire—making a total of just 100—drawn for these cases did reflect community feeling.

No safeguards were thrown around the jurors (Po., 85; Pa., 116; W., 83, not denied). They were allowed—even after trial began—to read the newspapers (Po., 85; Pa., 116; W., 83). And there was a particular reason why, well before the trial, the Jackson County jurors must have had their attention called to the Jackson County Sentinel's articles. All the 100 had their names printed on April 2 in the same article in the Sentinel that described how the negroes had been "indicted on the most serious charges known on the statute books of Alabama, rape",—the same article that explained that "the matter will," unless it "becomes necessary to try each defendant separately," "be made brief" (Po., 12; Pa., 11-12; W., 11-12). Upon the hearing of the motion for a new trial the only juror that any one bothered to ask whether he read the newspapers, said he did. He "read the Scottsboro papers about the attack on these girls." He believed, too, that he "read the Chattanooga papers. I think those papers said these men, or some of them, had confessed their guilt" (Po., 119; Pa., 142; W., 114).*

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*For a like statement in the Sentinel of April 2, see Po., 11; Pa., 10; W., 10-11.

We have noted the applause that greeted the rendition of the verdict in the first case. Captain Fricke of the National Guard testified that when this verdict came in and "the applause in the court room" broke out, the jury that was then hearing the second case was in the jury room,—about 30 feet away (Pa., 141). The transom was partly open (Pa., 141).

The defense upon the hearing of the motion for a new trial requested the production of the members of this second jury. Through some misunderstanding it was the members of the third jury who were in fact produced. That jury was not as a body present at the rendition of the first verdict. But one juror recalls "hollering" (Po., 120; Pa., 143; W., 116); another remembers "whoopee" (Po., 118; Pa., 142; W., 114); another remembers "a lot of noise, hollering and shouts" (Po., 125; Pa., 149; W., 121). A fourth says flatly:

> "It was generally understood by everybody" that the bringing in of the verdict "was the reason for the demonstration" (Po., 127; Pa., 150; W., 122).

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*For references in the newspapers to some negro boys implicating others, see Po., 7, 17; Pa., 6, 16; W., 6, 18).

All the jurors were summoned for April 6. Most or all must have been there when Major Starnes in advance of the production of evidence referred to "the attack" as an established fact.

The question here is not of "the petitioners' innocence or guilt." It is "solely the question whether their constitutional rights have been preserved" (*Moore* vs. *Dempsey,* 261 U. S., 87-8). The consideration that the results reached in trials wholly unprepared and essentially undefended were—as tested even by their own records—wrong results is not as such material. But "there must be calmness and deliberation or at least the fair opportunity for them" (Cardozo, writing of *Moore* vs. *Dempsey* in *The Paradoxes of Legal Science,* p. 123). And the Chief Justice of the Alabama Court properly found a basis for his conclusion that the trial was not in the constitutional sense "fair and impartial" in the circumstance that the jury's action revealed "no discrimination" (Po., 173).

The records afford the following major indicia that the juries' action *was* without discrimination and the reverse of deliberate and calm:

(1) The physicians that examined the girls were scientific men. The prosecution called them and vouched for their quality. These doctors made their examination within an hour and a half or less after the occurrence to which the girls testified (W., 32, 33),—an occurrence that if it took place would be unspeakably harrowing. Doctor Bridges said the girls were not "hysterical over it at all" (Pa., 31). They were not even "nervous" (Pa., 31).

Doctor Lynch confirmed Doctor Bridges (W., 38).

(2) The story was that 6 persons had intercourse with each girl. But the doctors found in Ruby Bate's case that there was only the deposit normal to a single act

of intercourse (W., 33, 34, 37-8; Pa., 31; Po., 29).* In Victoria Price's case they found even less,—much less (W., 37-8; Pa., 31; Po., 29).

(3) Victoria Price testifies that she resisted. "I fought back at them" (W., 30). "They hit me on the head" with a gun (W., 27). But neither doctor testified to finding any head wound or any contusion anywhere. Both doctors testified that there were no lacerations, and neither girl showed evidence of bleeding (W., 36, 37, 38).

(4) The crime charged was a crime said to have been committed in an open gondola car in broad daylight on a train that passed through several towns and villages,—Woodville, Hollywood, Scottsboro and Larkinsville. The prosecution was able to produce five witnesses that saw a fight on the train, including two who saw girls on it (Po., 31, 32; Pa., 33, 34; W., 48, 50). It produced none that said they saw a rape. No flagman or signal man, no railway employee at any station was produced as a witness at any trial. No affidavit from any such person was introduced in opposition to the motion for a new trial. The only person on the train or connected with its operation—except the prosecuting witnesses and the defendants—that at any time told what happened on that train that afternoon, was Mr. Ricks.** In support of the motion for a new trial he made affidavit that he saw the girls get into a *box* car at Stevenson and that "they were in it when he last

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*Ruby Bates expressly testified that she was not a virgin (W., 43; see also Dr. Bridges at Po., 30).

**The Gilley boy in one case in rebuttal identified the boys as being in the gondola car (Po., 47). But he was not called to give evidence of the rape and was not permitted in rebuttal to testify one way or the other about it.

saw them until they got to Paint Rock" (Po., 107-8; Pa., 139; W., 105).

(5) There were seven white boys on the train. They obviously had a story to tell:

"We had spoken a few words with the white boys," Mrs. Price herself says (W., 28), though she adds, "but that wasn't in no loving conversation" (W., 28). The colored boys "shot five times over the gondola where the [white] boys were" (Po., 26). "While the defendant Montgomery was having intercouse with me and the other one held me", the colored boys told the white boys that "they would kill them, that it was their car and we were their women from then on" (Po., 23). Thurman, a white boy, was hit on the head with a gun, according to Mrs. Price (W., 28). Falling, he "looked back and seen the one sitting behind defendants' counsel grab me by the leg and jerk me back in the gondola" (W., 28). "There was one white boy on the car that seen the whole thing, and that is that Gilley boy" (Price, W., 27); he was "in the gondola all the time the ravishing was going on" (W., 33).

There was no difficulty about producing the white boys. Their names were printed as early as March 26 in the Sentinel (Po., 6; Pa., 6; W., 6). They were kept in the prosecution's "control" (Po., 115; Pa., 110; W., 112). But no white boy other than Gilley was called in any case; Gilley was called in one case only, the last, and in that case in rebuttal only; his testimony comes to nothing more than that he had seen the defendants (Po., 47).*

(6) The negro boys "had their knives and pistols on them when they stopped the train at Paint Rock"

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*No affidavit from Gilley or any of the white boys was produced in opposition to the motion for a new trial.

(W., 47). Both girls were able to testify even to the calibre of the pistols (W., 23; Pa., 29; Po., 24). Two pocket knives, one admitted by one of the boys to be his (Po., 41), another disputed (W., 58-9), were introduced in evidence. No pistols.*

(7) The juries accepted the stories of Victoria Price and Ruby Bates and accepted them as to all defendants,—no matter how flimsy in the case of a given defendant the evidence of the prosecutrices themselves might be. Take, as an illustration, the case of Roberson, one of the defendants in the Powell group. His testimony was that he was not in the gondola car at all but lay seriously sick in a box car (Po., 36-7, 43-4); other negroes, who admitted the fight with the white boys and their own participation in it, confirmed that Roberson was not in the car (Po., 38, 42); a white witness who was one of the posse that met the train at Paint Rock confirmed that he saw some one get off that part of the train where Roberson said he had been (Po., 45); a doctor called by the State who had examined Roberson confirmed that he was sick and added that his condition was such as to make participation in a rape "painful" (Po., 29).

Yet Victoria Price said he had been "with the other girl" (Po., 25). Ruby Bates in general terms included

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*No explanation of the failure to produce the pistols was given. (For affirmative evidence of searching the boys, see W., 58.)

Similarly, Mrs. Price testified that her undergarments "were torn off," "pulled apart" (W., 29, 23). The garments were not produced, nor explanation given.

Both Mrs. Price and Miss Bates—although of course as Mrs. Price testified "there were no charges against us" (Po., 43)—were "held in jail since the 28th of March last month." "They kept us locked up in the jail, both of us locked up there" (Po., 43; for like testimony, see W., 31). And the purpose of confining them was that they might be "witnesses in these cases" (Po., 43). (That Mrs. Price on several occasions while she was in jail saw the defendants, see her testimony at Pa., 24.)

Roberson as among the five Powell defendants all of whom she said were in the car,—but she did not separately identify him and did not recall that incident of her being herself raped by him to which Victoria Price testified (Po., 26). The Gilley boy, too, did not identify Roberson separately but said "I saw all the negroes were in that gondola" (Po., 47).*

Roberson was convicted.

(8) The *punishments* in the cases of all defendants were the same. The death penalty was inflicted alike upon Patterson, the supposed leader, and upon his followers. It was inflicted upon the Williams boy, not 15, if that (Pa., 43; Po., 117), and, to the observation of the jury, small. Victoria Price identified him to the jury as "the little bit" of a boy (W., 29).

For the significance that Anderson, C. J., found in the fact that the jury as to every one of the defendants imposed the "extreme" penalty, see Po., 173.

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*The state called in rebuttal in the Powell case four witnesses besides Gilley for the purpose of identifying the defendants of the Powell group. None of them added anything to the identification of Roberson:

The two who mentioned Roberson by name testified that they first saw him after he had been taken off the train and was in the group with the other negroes under guard (Latham, Po., 44; Keel, Po., 47). The two others referred to a negro sitting "on the end of the front row": One recognized *that* negro as one of those he had seen coming out of the gondola "when the train came around the curve right below town" (Rousseau, Po., 44-5); the other said, "I think I saw that negro" "on the top of the gondola car" (Brannon, Po., 45). But there is no suggestion that the negro referred to was Roberson. On the contrary Roberson had been pointed out by Victoria Price not as sitting "on the end of the front row" but as "third" from the end (Po., 25).

One of these two witnesses as we have said confirmed Roberson's story by giving the testimony as to seeing someone get off the rear of the train.

The issue of identification was the more obviously crucial because—although the orders were "to get every negro off of the train" at Paint Rock—upon the testimony of all witnesses there were at least 3 negroes on the train who were not apprehended or tried (*supra*, p. 13).

If the trained and experienced judge is swayed by the feelings of the community the circumstance is evidence that the jury is carried away,—evidence and cause. To us the conclusion is unescapable that the trial judge *was* swayed by the emotion of the occasion, and we deem it our duty to note the more obvious indications.

He first made an "appointment" of counsel invalid under the statutes of the State, and that if valid would have been obviously insufficient to lay a specific responsibility upon any individual attorney. If ever he made an appointment that was even in form effective, he did so on the last possible occasion,—on the day for which all trials were set, the day the first trial commenced. He acted with declared reluctance,—with an apology that made the duty an "imposition."*

The judge summarily denied a change of venue. This he did although a statute of the State—the military being present—authorized him to change the place of trial on his own initiative and without motion by defendants. The judge knew the military were there and knew the need for the military. He had himself ordered the commander of the unit to intensify his precautions,—to search citizens for arms. Yet he did not act of his own initiative, and denied the relief when the defense took the initiative.

In the first case and again in the second, with lives at stake, the judge by his opening sentence notified the jury that all he demanded was their "attention for a few moments."

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*Contrast the following statement by Judge Cooley:

The duty resting upon assigned counsel "is a duty which counsel so designated owes to his profession, to the court engaged in the trial, and to the cause of humanity and justice, not to withhold his assistance nor spare his best exertions, in the defense of one who has the double misfortune to be stricken by poverty and accused of crime" (1 *Con. Lims.*, 8th Ed. [1927], 700).

In three capital cases, involving eight defendants, the judge made his decision upon motions for new trial resting upon voluminous affidavits and raising far-reaching issues under the Constitution of the United States the day the motions were submitted. Denying the motion for a new trial in every case and as to every defendant he sustained the death penalty even when inflicted upon a boy shown by evidence uncontradicted to be under 16,—in opposition to "the plain mandatory terms of the statute" (Po., 168).

IV.

Errors below relied upon here; summary of argument.

The Alabama practice does not call for assignments of error but simply for a bill of exceptions (Code, §3258, Appendix). There are no assignments in these records.

The errors the State Court, in the denial of federal constitutional rights, committed and the points we urge are in summary form as follows:

I. There was no fair and impartial trial and there was therefore a denial of due process. The decision of the State Court is not in accord with the decision of this Court in *Moore* vs. *Dempsey,* 261 U. S., 86.

II. Due process of law includes the right to counsel with its accustomed incidents of consultation and opportunity for preparation for trial and for the presentation of a proper defense at trial. That right was denied. The decision of the State Court is not in accord with the decision of this Court in *Cooke* vs. *United States,* 267 U. S., 517, and not in accord with the whole line of decisions upon notice and opportunity to defend beginning with *Pennoyer* vs. *Neff,* 95 U. S., 714.

III. The systematic exclusion pursuant to custom of long standing of qualified negroes from the juries and the trial of members of the negro race and their conviction by juries thus composed is a denial of the equal protection of the laws. Objection to the exclusion was—allowance being made for the circumstances—reasonably taken. The decision of the State Court is not in accord with the line of decisions in this Court from *Neal* vs. *Delaware*, 103 U. S., 370, through *Martin* vs. *Texas*, 200 U. S., 316.

IV. The State Court's analysis of the issues of due process and equal protection is at all points either irrelevant or mistaken.

POINT I.

The trial was not fair and impartial, and the conviction, confinement and death sentence constitute a deprivation of liberty and life without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

The decision of the state court is not in accord with Moore vs. Dempsey, 261 U. S., 86.

"Where a state court has decided a federal question of substance" "in a way probably not in accord with applicable decisions of this Court" there is a typical case for certiorari. *Moore* vs. *Dempsey* (261 U. S., 86) is the applicable decision. We compare, therefore, the facts of the records at bar as we have summarized them, with the facts as shown by the *Moore* opinion and record,—collating under separate heads (1) items of obvious identity; (2) items shown in the *Moore* case and not here shown or not here shown so explicitly; (3) items absent in the *Moore* case and here present.*

(1)

(a) A "Committee of Seven and other leading officials" reminded the Governor of Arkansas a year after the event that at the time they "'gave our citizens their solemn promise that the law would be carried out'" (261 U. S., at 89).

In the cases at bar the day of the offense—as we learn from the newspaper of the next day—"Mayor Snodgrass

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*Mr. Justice Holmes in the *Moore* case in certain instances read—as anyone dealing with a problem of the sort must read—between the literal lines of the record in order to seize the spirit of the proceedings in the Arkansas court. It is partly for this reason, and also for the further reason that certain facts in the record are not mentioned in the opinion, that we make constant reference to the Moore *record.*

and other local leaders addressed the threatening crowd and plead for peace and to let the law take its course" (Po., 8; Pa., 7; W., 7). "Calm thinking citizens" "realized that while this was the most atrocious crime charged in our county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process" (Po., 8; Pa., 8; W., 8).

(b) "The petitioners were brought into Court and informed that a certain lawyer was appointed their counsel" (261 U. S., at 89). "They were given no opportunity to employ an attorney of their own choice" (*Moore,* Rec., 5).

(c) Appointed counsel "had had no preliminary consultation with the accused" (261 U. S., 89).

(d) Moore and the rest "were placed on trial before a white jury—blacks being systematically excluded" (261 U. S., 89).

(e) "Counsel did not venture to demand delay or a change of venue, to challenge a juryman or to ask for separate trials" (261 U. S., at 89).

Counsel in the cases at bar did venture to hand up "a single copy" of a half-page petition for a change of venue, with newspaper exhibits (Po., 4-5, 92; Pa., 4, 82; W., 4, 89). But counsel did not have opportunity to make that examination upon which a genuine exposition of the sentiment of the community depended.

Counsel in these cases too did not "demand delay."

We can be certain there was no challenge to any juryman. For on the motion for a new trial the State successfully interposed objection to the inquiry whether even that question which in the circumstances of this case was the most obvious was put to jurymen (Po., 123, 125, 126, *et seq.;* Pa., 147, 148, 150, *et seq.;* W., 119, 120, 122, *et seq.*).*

In these cases too the defense did not "ask for separate trials,"—although its right thereto was absolute under the statute and although the prosecution, whose right was merely discretionary, asked for a severance in every case and obtained just the severances it wanted.**

(f) The *form* of trial was observed in the *Moore* case. The appointed counsel "cross-examined the witnesses, made exceptions and evidently was careful to preserve a full and complete transcript of the proceedings" (261 U. S., at 96, dissenting opinion).***

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*There was certainly no clear reference to the absence of challenges in the *Moore* record, if indeed any reference. There is merely a statement that there was no "objection to the organization of the grand jury" and "no objection to the petit jury or any previous proceedings" (p. 7). But the conclusion that there were no challenges was irresistible in the *Moore* case as it is in the cases at bar, and for the same reasons.

**The psychological effect of the order of trials was identical in the *Moore* case and in the cases at bar:

Frank Hicks, who was supposed to have fired the shot that killed Clinton Lee, was tried by the prosecution first and alone; immediately thereafter the other 5 defendants were brought to trial together (see *Moore*, Rec., 81, 106).

The Alabama prosecutor first tried Weems, one of the older boys (Pa., 23; Po., 24) and with him Norris, who to the surprise of the defense (W., 57), declared that there was raping by colored boys though not by himself; it next tried Patterson, the leader of the colored boys in the fight with the white boys, and tried him alone (Pa., 20); it then tried 5 more, leaving out only the 14-year-old Roy Wright.

***The following pages of the *Moore* record illustrate this statement: 29; 31; 32; 36; 37; 41; 43; 47; 49; 50; 54. Seven witnesses were called.

(2)

(a) There is only one concrete respect in which the *Moore* record went beyond these records in the demonstration that *only* the forms were observed. The petition in the *Moore* case recited that the trial lasted less than an hour and that the jury's verdict was brought in in a few minutes (*Moore*, Rec. 5). The *Moore* case was upon demurrer and this Court, of course, accepted these statements of the petition.

The practice in Jackson County does not, as the records show, take note of the time a jury goes out and returns. Mr. Roddy and Mr. Moody had no part in the affidavits challenging the fairness of the trial and raising the constitutional issues of due process and equal protection.* The ignorant and frightened boys who were the defendants were hardly in a position to make estimates concerning the length of the trials or of the jury's "deliberations." What is certain is that if there had been extended deliberation the prosecution would have shown the fact. For it would have been at least as easy to procure affidavits from the prosecuting officers themselves, as, let us say, from sheriffs and deputy sheriffs (compare W., 137, 139, 140, 142),—not to speak of out-

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*Compare *Downer* vs. *Dunaway* (53 F. [2d], 586; December, 1931),—a decision of the Circuit Court of Appeals in the Fifth Circuit reversing the District Court and granting, on the authority of *Moore* vs. *Dempsey*, a petition for *habeas corpus* in a situation like that presented in the *Moore* case and in the cases at bar. Speaking of counsel assigned on the day of trial to defend a negro accused of rape, Bryan, C. J., says:

> "Counsel who represented appellant may have construed their appointment as covering only the actual trial, such as impaneling the jury, examining and cross-examining the witnesses, and making arguments in the case; and not as including the making of motions for continuance, change of venue, and a new trial" (p. 589).

siders like the editor of the Jackson County Sentinel (Po., 134; Pa., 158; W., 135).

The clear facts are the gross facts:

All three trials were commenced and concluded in three days.

The Powell case, involving 5 defendants, was started on the last day *after* 6 witnesses had testified in the Patterson case, and *after* the judge had charged the jury in that case (Pa., 42, *et seq.;* Po., 2-53). Yet the Powell jury found time the same day to bring in a verdict that all defendants were guilty and that all defendants should suffer the extreme penalty.

(b) The only other matters that could even be suggested as pointing to a more flagrant denial of the essentials of due process in the actual course of the *Moore* trials than in the trials at bar are matters of mere conclusion, and are indeed stated in the *Moore* record as matters of conclusion. There were general statements that "there never was a chance for the petitioners to be acquitted;" that "no juryman could have voted for an acquittal and continued to live in Phillips County;" that "if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob" (261 U. S., 89-90).

It is hardly necessary to say that this Court noted the merely conclusory quality of these declarations. It quoted them with the prefatory phrase, "according to the allegations and the affidavits" (261 U. S., at 89).*

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*As we shall see in more detail (*infra*, pp. 73-74), peculiarly where the issue is as to matters of community sentiment statements of conclusion and opinion are to be disregarded. Such allegations cannot be compared for real substance to concrete facts like the prisoners being carried to court at night under military guard; their parents fearing to come to Scottsboro or even to Gadsden; applause in the court room on the rendition of the death verdict, etc.

We pass now from circumstances of obvious and often of verbal identity and from circumstances at most of unessential difference, if of any, to those facts and features that make the great decision in *Moore* vs. *Dempsey* authority *a fortiori* in support of the petitions at bar.

(3)

(a) The crime in the *Moore* case was on October 1, 1919 (*Moore*, Rec., 1); the trial was on November 3 (261 U. S., at 89; *Moore*, Rec., 27). More than a month elapsed between the occurrence and the trial.

(b) There were mob gatherings in the *Moore* case, too. But the outbreaks were definitely over in the *Moore* case by about the 10th of October at the latest (*Moore*, Rec., 15; 89; 3).* The military accordingly played no such part in the *Moore* case as in the cases at bar. The Governor of Arkansas did not call out the National Guard. The Governor did, on October 2, call on the commander at Camp Pike to send United States soldiers (*Moore*, Rec., 95) and some were at that time sent. But these soldiers promptly put an end to the disturbances (*Moore*, Rec., 2) and there is no suggestion that any soldiers, Federal or State, were around at the time of the *Moore* trials.**

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*So, too, the opinion notes that "*shortly after the arrest* of the petitioners a mob marched to the jail for the purpose of lynching them but were prevented by the presence of United States troops" (261 U. S., at 88). And the dissenting opinion alludes to "the disorders of *September*, 1919" (at 101).

**For affirmative indication that soldiers were not around, see *Moore*, Record, 98.

This is the situation in the cases at bar as Chief Justice Anderson summarized it:

> "Every step that was taken from the arrest and arraignment to the sentence was accompanied by the military. Soldiers removed the defendants to Gadsden for safekeeping, soldiers escorted them back to Scottsboro for arraignment, soldiers escorted them back to Gadsden for safekeeping while awaiting trial, soldiers returned them to Scottsboro for trial a few days thereafter, and soldiers guarded the court house and grounds during every step in the trial and, after trial and sentence, again removed them to Gadsden. Whether this was essential to protect the prisoners from violence or because the officials were over apprehensive as to the condition of the public mind, matters little as this fact alone was enough to have a coercive influence on the jury" (Po., 172).

(c) It was alleged in general terms in the *Moore* petition (*Moore,* Rec., 3) and accepted by this Court (261 U. S., at 88) that "inflammatory articles" appeared day by day. But the *Moore* record contains only one article, which appeared on October 7 or nearly a month before the trial (*Moore,* Rec., 11-14). And that article—highly colored as it was—carries no suggestion of lynch law and makes no charge and gives no intimation of the individual guilt of any of the negroes who were subsequently brought to trial,—let alone of all of them. The articles in the cases at bar refer not only to "a crime without parallel" but to evidence essentially "conclusive," evidence "almost perfect,"—to "confessions."*

(d) "The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous

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*There is mention in the article which appears as an exhibit in the *Moore* record of "confessions" by certain negroes. But no one of the negroes subsequently brought to trial is named as making these confessions or as being implicated by them.

consequences to anyone interfering with the desired result" (261 U. S., at 89).

In the cases at bar on March 25 "a great crowd gathered at the jail,"—a "threatening crowd" (Po., 8; Pa., 7; W., 7); on March 31 a "great crowd was present or tried to get into the court room" (Po., 11; Pa., 10; W., 10); for April 6 a "tremendous crowd" was predicted (Po., 15; Pa., 14; W., 16); on April 6 the sheriff testified that "right now" there was present a "great throng" (Po., 95; Pa., 85; W., 92).

There is no suggestion in the *Moore* opinion or record that the crowd around the court room or any member of it was armed or that there had been any use of firearms by anyone since the quelling of the disturbance about a month before the trial (*supra,* p. 48). In the cases at bar the commander of the military found it necessary to "issue orders to his men" not to permit citizens to "come in the court house or court house grounds with arms." The situation existed "on every appearance of the defendants." It "exists right now,—" on April 6. The precaution was adopted "under orders of the court" (Po., 97; Pa., 87; W., 94).*

(e) There is no reference in the *Moore* opinion or record to any applause in the court room or the court house or the court house grounds or anywhere when either one of the verdicts in the Arkansas prosecutions was rendered.*

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*The Powell opinion contains the following (Po., 154):

> "It should be stated that the judge of the court did not direct the sheriff to call for the militia, nor did the judge of the court make any request upon the Governor for the militia."

The militia were called out on March 25, before the judge called a session of the court or even came to Scottsboro (see Po., 8; Pa., 7; W., 7). What is indisputable is that finding the militia already there, the judge gave orders making even more drastic the precautions that the sheriff and the military officers had adopted.

(f) Counsel in the *Moore* case "called no witnesses for the defence although they could have been produced, and did not put the defendants on the stand" (261 U. S., at 89).

That was a bad situation for the defendants in the *Moore* case. The situation of the defendants in the cases at bar was worse: As the several cases came to trial, other negroes against whom the same indictments lay—and like the actual defendants bearing the odium of "a crime without parallel"—were called as witnesses for the defense. The *only* witnesses for the defense in any case were persons under indictment. And in two of the cases—in the first case, which foreshadowed the result in the subsequent cases, and in the second case—these witnesses for the *defense* went back upon their *co-defendants* (W., 55-8; Pa., 39-41).**

(g) Neither side summed up to the jury in the *Moore* case (*Moore*, Rec., 51). But consider the cases at bar. No feature is more eloquent of the general atmosphere than the following extract from the Weems Record, already partially quoted:

**Frank* vs. *Mangum*, 237 U. S., 309, attests the extreme importance of such evidence. Two of the justices in the *Frank* case thought that proved instances of applause and feeling in the court room, standing substantially alone, established a denial of due process.

**The essential situation as disclosed in the *Moore* case and in the cases at bar was the same,—with the important difference noted above that the defense in the *Moore* case did not have the experience of being surprised by having its own witnesses go back on it. In the *Moore* case, too, the supposed guilt of the negro defendants was established by the testimony of negro witnesses,—in that case called by the prosecution (*Moore*, Rec., 31-45).

In the *Moore* case these negro witnesses subsequently signed affidavits declaring that the testimony they gave had been enforced by torture (*Moore*, Rec., 15-19). For a like affidavit by Norris, the witness who went back on Weems, see W., 130.

> "After both sides had closed their testimony, defendants' counsel stated to the court that they did not care to argue the case to the jury, but counsel for the State stated to the court that they did wish to argue the case to the jury, and one of counsel for the State proceeded to argue the case to the jury. At the conclusion of said argument of counsel for the State to the jury, counsel for defendants stated that they *still* did not wish to argue the case to the jury, and objected separately and severally on behalf of the defendants to any further argument of the case to the jury by counsel for the State, on the ground that after counsel for defendants had declined to argue the case to the jury any further argument on behalf of counsel for the State to the jury would be contrary to the law and the rules of practice of this court, and would be harmful and prejudicial to the interest of the defendants. The court overruled said objection and permitted counsel for the State to further argue the case to the jury, to which action of the court defendants separately and severally reserved an exception" (W., 59).*

(h) Moore and his fellow petitioners "were citizens and residents of Phillips County, Arkansas." They were tried in Phillips County (*Moore,* Rec., 1). The petitioners for certiorari, sentenced to death in Alabama, were all residents either of Tennessee or Georgia (*supra,* p. 25).

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*For an incident hardly less striking at the conclusion of the Powell case, see Po., 48.

(i) Moore and his companions were "poor and ignorant and black" (dissenting opinion, at 102). But they were grown men. They were moving spirits in an elaborate organization,—in the words of a witness of their own race "the head leaders" (*Moore,* Rec., 40; see also 31). The leader in the cases at bar was a boy under 21; in so far as the records show the ages, they show affirmatively that all the others were under 21 (*supra,* p. 25).

This Court, in a cardinal opinion, recognized that the reason for the Fourteenth Amendment's adoption was that the prior experience of the then emancipated negro race had left them "mere children" (*Strauder* vs. *West Virginia,* 100 U. S., 303, 306). It cannot, we submit, overlook, upon the issue whether process was due or protection equal—whether the trial was fair, whether the right to counsel was respected—, the youth of the negroes that were here on trial for their lives.

* * *

With the facts of the *Moore* record thus laid bare there can be no distinction between the *Moore* case and the cases at bar,—certainly no distinction against the petitioners.

The grounds on which the Arkansas Court unanimously sustained the conviction of Moore and the rest are the same grounds on which the majority of the Alabama Court proceeded in the cases at bar:*

"Eminent counsel," the Arkansas Court said, "was appointed to defend appellants" (*Moore,* Rec., 66), precisely as the Alabama Court certified that Mr. Moody was "an able member of the local bar" (Po., 170).

The complaint of discrimination against Moore and his fellow petitioners by reason of the systematic exclusion

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*The opinion of the Arkansas Court besides appearing in the *Moore* record is reported *sub nom.* *Hicks* vs. *State* in 143 Ark., 158.

of negroes from the jury, the Arkansas Court "answered by saying that the question was raised in the motion for a new trial, and it, therefore, comes too late to be now considered" (*Moore,* Rec., 65). The Alabama Court said the same thing (Po., 162).

"The trials were had according to the law," the Arkansas Court went on, "the jury was correctly charged as to the law of the case, and the testimony is legally sufficient to support the verdicts returned" (*Moore,* Rec., 66). The majority of the Alabama Court, too, affirmed the convictions because they found no exceptions well taken upon points of law.

The Alabama Court mentioned the *Moore* case but declined to apply it (Po., 158). It said that the cases at bar were different but it stated not one circumstance of distinction. The Alabama Court mentioned, too, the case so recently decided by the Circuit Court of Appeals in the Fifth Circuit (*Downer* vs. *Dunaway,* 53 F. [2d], 586),—giving relief upon the authority of the *Moore* case to a negro tried for rape and hurried to conviction in circumstances like those in the cases at bar. In this connection, too, it mentioned not one circumstance of distinction (Po., 158). Chief Justice Anderson in dissenting reasoned in the same way as did this Court in the *Moore* case and to the same conclusion,—that the accumulation of circumstances and considerations establishes that the trial was not fair and the process not due.

* * *

This Court, which in the *Moore* case granted relief even by the extraordinary remedy of *habeas corpus*—a remedy whose basis is a challenge of the state court's jurisdiction—, should not, we submit, in the cases at bar close the door to direct attack.

POINT II.

Due process of law includes the right to counsel and its accustomed incidents. This right in all effective sense was denied defendants. The decision of the state court cannot be reconciled with the definition of the right to counsel given in Cooke vs. United States, 267 U. S., 517, and with the requirement of notice and opportunity to defend set up in Pennoyer vs. Neff, 95 U. S., 714 and subsequent decisions.

"With us it is a universal principle of constitutional law, that the prisoner shall be allowed a defense by counsel (1 *Cooley, Con. Lims.* [8th ed., 1927], p. 700, collecting authorities).

The right to counsel is of the essence of the right to due process and included within the due process provisions. "Due process of law," declared Taft, C. J., in *Cooke* vs. *United States* (267 U. S., 517, 537), "includes the assistance of counsel, if requested, and the right to call witnesses to give testimony." As the Pennsylvania Supreme Court—setting aside a conviction that carried a 9 months' prison sentence and $1,000 fine because trial was had the day counsel was obtained, and citing the *Cooke* case and many others in this Court (*Commonwealth* vs. *O'Keefe*, 298 Pa., 169)—noted, the principle of the Cooke decision is but a particular application of a general requirement of notice and opportunity to defend running through a line of decisions that began at least as far back as *Pennoyer* vs. *Neff* (95 U. S., 714).

Nor is there question as to the scope of the constitutional right to counsel:

"In guaranteeing to parties accused of crime the right to the aid of counsel, the Constitution secures it with all its accustomed incidents" (1 *Cooley, Con. Lims.* [8th ed., 1927], p. 700). "The right to the aid of counsel includes the right to communication and consultation with him" (*ibid.,* footnote 5, collecting numerous cases). "The constitutional guarantee that one shall have the right to be represented by counsel means nothing if it does not mean that he shall have reasonable time in which to state the facts of his case to counsel after they are employed or appointed, and to be advised" (*Jackson* vs. *Commonwealth,* 215 Ky., 800, 802).

Russell, C. J., in *Sheppard* vs. *State* (165 Ga., 460, 464 [1928]), wrote:

> "Benefit of counsel either means something or it means nothing. To promise the benefit of counsel and then render the service ineffective is, as Judge Blandford once remarked, 'to keep the word of promise to the ear and break it to our hope.' The intense strain involved in the responsibility of defending one whose life is at stake is such as can scarcely be described in words; and altogether aside from inquiry into the facts of the case and legitimate inquiry so far as possible into the character of the jurors, as much time and thought are required to consider and determine what course of action shall be pursued in defending one whose life is at stake as in important civil cases where many thousands of dollars are involved."*

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*Sheppard was forced to trial in a capital case a week after the crime and the day counsel was appointed. His conviction was reversed.

Report No. 11 of the National Commission on Law Observance and Enforcement, *Lawlessness in Law Enforcement* (Government Printing Office, Washington, 1931) analyzes numerous cases (pp. 273-8). It quotes with approval the foregoing extract from Mr. Justice Russell's opinion.

The law is in no dispute. We turn to its application to the facts.

The extent of defendants' *own* capacity for the preparation and presentation of their case can be measured by obvious facts. "The defendants had no opportunity to prepare their defense, as they were kept in close custody from their arrest until the trial" (*Mitchell* vs. *Commonwealth,* 225 Ky., 83, 84 [1928]).* They were "ignorant,"—nearly or quite "illiterate" (*People* vs. *Nitti,* 312 Ill., 73, 89, followed in *Sanchez* vs. *State,* 199 Ind., 235, 246).**

Defendants' families were hardly in better case. With their sons about to be on trial for their lives or actually on trial for their lives, the parents were "afraid to go to Scottsboro" or to Gadsden (*supra,* pp. 25-6). "Parents, kinsfolks or friends" had no communication with the boys (*supra,* p. 25).

If then anything was to be done for the boys it was only counsel that could do it. We have summarized the facts as to the "appointment" of counsel:

The appointment of March 31 was invalid. The statute permits the appointment of not more than two. All the

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*The Kentucky Court, in circumstances much like those in the cases at bar—the National Guard had been called out, etc.—reversed the conviction of a negro charged with killing a white man and tried a week after the alleged offense and a few days after "he had *employed* an attorney."

**There were no questions of mob domination in the *Nitti* and *Sanchez* cases, in which the convictions were reversed by reason of inadequate representation by counsel. The defendants in both cases were foreigners. That at least as much allowance is to be made for negroes in a case where "race prejudice has been aroused and public excitement prevails" compare *Mitchell* vs. *Commonwealth, supra,* 225 Ky., at 85.

lawyers were to "defend" all the boys. "The court did not name or designate particular counsel, but appointed the entire Scottsboro bar, thus extending and enlarging the responsibility and, in a sense, enabling each one to rely upon others" (Anderson, C. J., Po., 172). Of course such an appointment would be in the constitutional sense no appointment even if local statute permitted instead of forbidding it. Everybody's business, it is proverbial wisdom, is nobody's business.

This is defendants' situation upon the crucial day—April 6—, as it stands uncontradicted and unqualified upon the record: "They did not know who would be their counsel and they had been in jail ever since they were arrested, March 25, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinsfolks or friends and had no chance to procure witnesses" (Po., 80; Pa., 111-2; W., 78; see also Po., 83; Pa., 114; W., 80).

As to April 6 the facts are so familiar that a few comments will suffice:

(a) The boys were not asked whether they had counsel or what counsel they wanted. They were at most, "informed that a certain lawyer was appointed their counsel" (261 U. S., at 89).

Nor would a suggestion to the boys that they or their families employ counsel of their own have been an empty formality. The plain and conclusive fact, which Chief Justice Anderson points out (Po., 172-3), is that they were subsequently able to procure counsel of recognized standing.

(b) Even on April 6 there was not so much as the form of an *appointment*. The judge exercised no discretion in the selection of counsel. He simply said that "all the lawyers that will" help Mr. Roddy, may do so (Po., 91; Pa., 81; W., 88). When one lawyer spoke up and expressed his readiness to "help Mr. Roddy in anything I can do about it under the circumstances," the Court at once accepted that lawyer. "All right," he said (Po., 91; Pa., 81; W., 88).*

(c) Nothing was done to stimulate the zeal of the counsel thus not appointed by the Court but accepted by the Court. The Court in terms and twice over characterized what should have been a call to duty as an "imposition."

(d) The counsel who was recognized as chief counsel and whom the local lawyer appeared only to help, was a counsel "not familiar with the procedure in Alabama",—a counsel who had not had "an opportunity to prepare the case" and who "had not prepared this case for trial" (Po., 59; Pa., 80; W., 87); a counsel "here just through the courtesy of your Honor" (Po., 59; Pa., 80; W., 87); a counsel who urged "Your Honor to go ahead and appoint counsel;" a counsel who stated:

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*The lawyer whose offer was accepted had not, so far as appears, even seen the boys before April 6.

Evidently referring to the proceedings of March 31—for it is uncontradicted that no lawyer saw the boys either in the Scottsboro jail or in Gadsden prison (*supra*, p. 58)—Mr. Moody says:

> "*Most* of the bar have been down and conferred with these defendants in this case; *they* did not know what else to do" (Po., 58; Pa., 79; W., 86).

The italicized words indicate that Mr. Moody had *not* been one of the lawyers that saw the boys at the time of the indictment on March 31 and the abortive arraignment had on that day.

"I think the boys would be better off if I step entirely out of the case" (Po., 59; Pa., 80; W., 87).*

The authorities settling it that the right to counsel is constitutional and that it is included in the due process concept, impose no requirement that the defendant affirmatively show that his case, properly prepared, would have been different in character or in result. No defendant who has *not* prepared a case—who has *not* had ample time for consultation, investigation and the procuring of witnesses—can tell what case he *might* have made. No one—to pass from the general proposition to the particular situation—can tell what a jury, not confined to members of one race, meeting at a later time, in another place and with a different atmosphere, aided by prepared and informed counsel, deliberating upon a different record, would have done.

Although there thus is and can be no requirement that one complaining of the denial of the constitutional right to counsel concretely show the effects of the deprivation, certain indications are in these records so patent that we list them. By the records we shall show (1) the effect of the absence of preparation upon those proceedings which normally come in advance of trial; (2) the effect at the trial of the absence of preparation and of the lack of zeal on the part of lawyers, one of whom had no official connection and the other of whom heard the work defined by the judge as an "imposition." We shall see concretely how right the Alabama Chief Justice was in his declaration:

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*Addressing itself directly to Chief Justice Anderson's dissent, the majority of the Court "think it a bit inaccurate to say Mr. Roddy appeared only as *amicus curiae*" (Po., 170). But the fact is uncontradicted that the only lawyer any of the defendants at any time *employed* was General Chamlee (Po., 75-6; Pa., 98; W., 73). Nor did the court in Alabama purport to *appoint* a lawyer from Tennessee.

"The record indicates that the appearance was rather *pro forma* than zealous or active" (Po., 173).

(1)

Consider first one or two of the motions that normally have to be made before a capital case comes to trial:

An objection to the constitution of a grand jury "based on allegations of facts not appearing in the record" "if controverted by the attorney for the State, must be supported by evidence on the part of the defendant" (*Carter* vs. *Texas,* 177 U. S., 442, 447).* An attorney whose declaration of willingness to help, appears 10 pages before the plea to the indictment has no opportunity to get such evidence.

Every lawyer knows that the preparation of papers in support of a motion for a change of venue is no easy task. The Alabama Code requires that the defendant "set forth specifically the reasons why he cannot have a fair and impartial trial in the county" (Code, §5579; see Appendix). And the Alabama Court in these cases said that "the burden of proof was upon the defendants to show that they could not get a fair and impartial trial in Jackson County, before the court would have been justified in granting the change of venue moved for" (Po., 157). It takes time to discharge this burden.

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*The Alabama practice is particularly strict against objections to an indictment. Any objection to the formation of the grand jury must be taken "in all cases before a plea to the merits" (Code, §5203, Appendix; see also §5202 purporting to wipe out all objections to the constitution of a special grand jury). That such restrictions of "local practice" (*American Railway Express Co.* vs. *Levee,* 263 U. S., 19, 21) are not binding upon the federal courts upon an issue of due process and equal protection, see *Rogers* vs. *Alabama,* 192 U. S., 226, cited in *American Railway Express Co.* vs. *Levee,* 263 U. S., 19.

The Kentucky Court in a late opinion (*Estes* vs. *Commonwealth,* 229 Ky., 617, 620) dealing with the very issue of mob domination, shows why—for the right to a change of venue to be effective—there must be *time* to prepare the motion. " 'It may happen that the strong feeling against the defendant in a county which prevents his having a fair trial may prevent him from obtaining witnesses to so testify on his motion for a change of venue.' "

The Alabama practice, too, permits "witnesses" to be called on a motion for a change of venue. But the only witnesses that Mr. Roddy and Mr. Moody called, or doubtless in the circumstances could call, were two witnesses—the Sheriff and the Major of the National Guard—who were physically present in court. There was no opportunity to *"obtain"* witnesses.

The refusal of the defendants' motion for change of venue was held not error by the Alabama Supreme Court because defendants did not "meet and discharge" "this burden of proof" (Po., 158). They did not have time to do the things necessary to discharge the burden.

Counsel in advance of a trial have not only to make motions. They have to prepare the case for trial. They have to find out the facts and discover the witnesses to the facts.

The situation in the cases at bar was as follows:

The crime charged was a crime in a moving train that had covered 50 miles while the offenses were supposed to be occurring, and had passed through a number of towns and villages. Counsel appointed on the morning of trial could not make an investigation along this route and in these places.

The defendants were all non-residents. Counsel appointed on the morning of trial and remaining in court in Alabama, could not hunt up character witnesses in Georgia and Tennessee.

The character of the prosecutrix and her reputation were not, as the Alabama Court held, in these cases at issue.* But the movements of the girls on the night before the alleged rape had—in view of medical testimony given without qualification by the State's witnesses (Po., 29; Pa., 30-1; W., 34-8)—a *specific* relevancy. These girls that came on a freight train from Chattanooga, which was not the home of either of them, gave hazy reports of their doings in that city on the night of March 24-25. They remembered only the street on which they stayed, but not the number of the house; they could not describe the street (W., 26, 43; Pa., 25, 29; Po., 27). Investigation was essential. But there was and could be no investigation.

The actual upshot was the inevitable upshot:

The only witnesses any of the defendants had were negroes,—and negroes under indictment for "a crime without parallel."**

We have already made reference to the affidavit of Mr. Ricks on the motion for a new trial. Its importance here is as a demonstration that—precisely as, time only being allowed, defendants could have had counsel at the trial equipped and prepared—so they could have had witnesses against whom no indictment stood and to whom no odium attached.

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*See *supra*, pages 23-24.

**That this Court may take judicial notice of the likelihood of prejudice against negro testimony compare *Aldridge* vs. *United States*, 283 U. S., 308.

(2)

The demonstration we have already given ends all doubt, not only that the right to counsel was denied, but that the denial was damaging. For if appointment is made so late as to preclude "inquiry into the facts of the case"—so late as to *preclude preparation*—, then indeed, in Judge Russell's phrase, "the benefit of counsel" is "promised" but "the service rendered ineffective" (*Sheppard* vs. *State*, *supra*, 165 Ga., at 464). It is worth while rehearsing, however, a few of the indications supplied by the records themselves that the cases thus not prepared were for practical purposes not presented.

We know how perfunctory was the petition for change of venue,—there was no argument in support; we know there was no motion for continuance of trial made by lawyers charged on the very day of trial with responsibility for the cases; we know there was no demand for severance although the issue of identification was cardinal and the right of the defense to separate trials absolute.

There was no opposition in any case to the severance the prosecution requested (W., 22, 96-7; Pa., 20; Po., 21). And this was the result:

The prosecution first tried Weems, "that old big boy" (Po., 24; Pa., 23), and with him Norris who implicated Weems.

The prosecution next tried Patterson, the leader, alone.

The prosecution finally tried Andy Wright, a declared member of the Patterson gang,—who had got on the train, as he said, with Patterson (Po., 38). With him—after two verdicts imposing the death penalty had been brought in—there were also tried four other defendants whose cases in other circumstances would obviously have had elements of peculiar strength with the jury: Powell who, Victoria Price said, did not rape her and who was not identified by either Victoria Price or Ruby Bates as having raped Ruby Bates (Po., 25, 27); Roberson,—seriously sick, and upon the testimony of various witnesses not even in the car where the fight took place (*supra*, p. 38); Montgomery,—weak in one eye, the other eye "out" (Pa., 46), he, too, on the testimony of various witnesses not in the car (Pa., 45-6, 47, 49; Po., 39-40, 38, 42); Eugene Williams, the "little bit of a boy."

There could be of course, as Judge Russell points out in the extract we have quoted and requoted, no "legitimate inquiry into the character of the jurors." We do not know absolutely that there was no challenge to any juror. But for reasons already given we may be morally certain. It is not easy to imagine a lawyer on April 6—with the crowd so moved by feeling against the black defendants that the Guard searched its members for arms—asking white jurors whether they entertained a prejudice against negroes accused of raping white women.

We have seen that the defense had no time to obtain witnesses except from its own ranks. From among its own members the defense in the first case called, as we know, a witness that gravely damaged its cause. The slightest preparation would have avoided the blunder. For it was well known—it was shown by one of the very newspapers that the defense itself on the morning of April 6 filed as an exhibit in support of its motion for a change of venue (W., 5)—that "one of the negroes had been taken out by himself" and had "confessed to the whole matter but said 'the others did it' " (W., 6). No such person would have been called by prepared counsel as a witness in any case except possibly his own,—and then only after a severance of his case.

The terrible mistake made in the first case was repeated in the second. Patterson was tried alone, but Roy Wright was called as a witness in his defense and told a story of raping by negro boys other than himself. And it was precisely against such testimony from Roy Wright that informed counsel would have known that precaution had to be taken. For Roy was only 14 years old, and according to the Jackson County Sentinel—according to the defenses's own exhibit—it was "one of the *younger* negroes" that had been "taken out by himself" and had said that " 'the others did it' " (Pa., 6).

There were few exceptions in the first case, fewer in the second, fewer still in the third (*supra*, pp. 20-1).

The record shows no opening address in behalf of any defendant. It shows no closing address in behalf of any defendant. In the first case and in the last it shows affirmatively that there was no such address. It shows further that defendants' counsel did not, as a condition of waiving a right profoundly important to their clients, obtain a countervailing waiver from the prosecution.*

In no case was a single instruction to the jury proposed to the Court. In none was a single exception taken to the instructions given.

* * *

We saw in our first point that there was in the constitutional sense no trial. We have seen in this point that there was in the constitutional sense no representation by counsel. Boys tried upon charges that imperiled their lives did not have "reasonable opportunity to meet them" (*Cooke* vs. *United States*, 267 U. S., at 537).

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*The Alabama Chief Justice has had nearly forty years continuous experience as a judge of the courts of his State. For the profound significance he attaches to the circumstance that summing up was waived by the defense and a countervailing waiver by the prosecution not executed, see Po., 173.

POINT III.

The trial of petitioners before juries from which qualified members of their own race were—because of their race—systematically excluded and their conviction by such juries, was a denial of the equal protection of the laws. Objection to the exclusion was—allowance being made for the circumstances—seasonably made.

The decision of the state court is not in accord with a long line of decisions in this Court going back as far as Neal vs. Delaware, 103 U. S., 370.

(1) "An accused is entitled to demand, under the Constitution of the United States," said Mr. Justice Harlan, speaking for an unanimous court, that "in the empaneling of the petit jury, there shall be no exclusion of his race, and no discrimination against them because of their race or color" (*Martin* vs. *Texas,* 200 U. S., 316, 321).

To the same effect

> *Virginia* vs. *Rives,* 100 U. S., 313, 321;
> *Rogers* vs. *Alabama,* 192 U. S., 226, 231;
> *In re Wood,* 140 U. S., 278, 285.

(2) It matters not how the State works the exclusion,—"whether through its legislature, through its courts, or through its executive or administrative officers." If "all persons of the African race are excluded solely because of their race or color," then a defendant of that race may say "the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States" (*Carter* vs. *Texas,* 177 U. S., 442, 447, collecting earlier authorities).

In accord are

Rogers vs. *Alabama, supra;*
Martin vs. *Texas, supra;*
Neal vs. *Delaware,* 103 U. S., 370.

(3) Where the fact is established that there is a considerable colored population and a regular practice of excluding colored men from juries, there is "presented a *prima facie* case of denial, by the officers charged with the selection of grand and petit jurors, of that equality of protection which has been secured by the Constitution and the laws of the United States" (*Neal* vs. *Delaware,* 103 U. S., 370, 397).

(4) The fact of systematic exclusion is shown in the cases at bar precisely as it was shown in the *Neal* case: "By reason of a custom of long standing there was not one negro selected for the entire trial, throughout the whole county with a population of 30,000 people when a large number of negro landowners were qualified jurors, or for jury service" (Po., 84; Pa., 115; W., 82).

(5) The *fact* of exclusion is tacitly admitted by the Alabama Supreme Court. All that that Court contends is (a) that the *statute*—the jury law of Alabama—works no exclusion, and (b) that "by failing to object to the personnel of the jury the defendant must be held to have waived all objections thereto" (Po., 162).

This Court has overruled both arguments:

(a) The precise point that it is immaterial whether the exclusion be by legislative enactment or in defiance of legislation by systematic official action was, as we know, decided over and over again in the whole line of cases from *Neal* vs. *Delaware* through *Carter* vs. *Texas* and *Rogers* vs. *Alabama* to *Martin* vs. *Texas.*

(b) "The law of the United States cannot be evaded by the forms of local practice" (*American Railway Express Co.* vs. *Levee,* 263 U. S., 19, 21, citing *Rogers* vs. *Alabama,* 192 U. S., at 230). Again, "the question whether a right or privilege, claimed under the Constitution or laws of the United States," was "brought to the notice of the State Court, is itself a federal question." This Court "in the decision" of this question "is not concluded by the view taken by the highest court of the State" (*Carter* vs. *Texas,* 177 U. S., at 447). In the precise case of the composition of juries the proposition has over and over again been declared, that the federal right to equal protection is not to be impaired by any principle of state practice—whether founded in statute or in judicial decision—clogging its assertion or exercise.

In re Wood, supra;
Rogers vs. *Alabama, supra;*
Carter vs. *Texas, supra.*

The defendants could not in any practical and human sense "have objected to the personnel of the jury." They were without counsel and without opportunity to prepare. By failing to assert their right to equal protection at a time they could not assert it, they did not lose the right. Due process and equal protection "overlap" (*Truax* vs. *Corrigan,* 257 U. S., 312, 332). It cannot be that—in a situation where a mob dominates and the effective right to counsel is withheld, where in every sense there is a deprivation of rights without due process—the failure to assert the right to equal protection is a forfeiture of that right.

* * *

In *Moore* vs. *Dempsey,* too, no statute worked exclusion. In that case, too, there was no objection to the composition of the juries, grand or petit. But these things did not cause this Court—when it vindicated Moore's constitutional rights—to overlook the fact that the jury was "white" and that "blacks were systematically excluded."

POINT IV.

The state court's analysis of the issues of due process and equal protection is at all points either irrelevant or mistaken.

The issues of due process and equal protection were, as we know, raised in the Alabama Courts and raised in the same form in which we have here urged them (*supra*, pp. 10-12). They were pressed upon the Supreme Court of Alabama. That Court stated its conclusions upon these points rather than the reasoning by which it reached them. It will readily appear that the discussion of federal constitutional issues is either (A) irrelevant to the problems as they are defined in this Court or (B) mistaken.

(A)

The Alabama Court disposes of the issue as to demonstrations at the rendition of the verdict by saying that evidence of such matters will not be received *aliunde;* of the issue as to the time of trial by saying that no motion for a continuance was made; of the issue as to the exclusion of negroes from the jury by saying that the motion was not made in time (Po., 161, 162; Pa., 177-8).

These are all rulings on points of local practice, and "local practice" cannot stand in the way of "the law of the United States" (*American Railway Express Co.* vs. *Levee, supra*).*

The questions are whether there was a real trial and an effective right to counsel. Where those *are* the questions it is circular and fallacious reasoning to say that rights are foregone by the failure to make motions or to make them in a particular form. Moore's counsel made no motions. This Court's deduction was not that he had thereby forfeited his right to due process. Its deduction was on the contrary that the trial had been unfair and that due process had been withheld.**

(B)

The following errors upon specific aspects of the constitutional issues may be noted:

(1) As to *due process* generally the inclusive mistake is in taking the various issues of place, of time, of the right to counsel, etc., *distributively.* The question is whether in the *aggregate* the combination of events and

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*On like principles this Court, "examining the entire record" will "determine" for itself "whether what purports to be a finding [by the state court] upon questions of fact is so involved with and dependent upon questions of [federal] law as to be in substance and effect a decision of the latter" (*Kansas City Southern Railway* vs. *Albers Com. Co.*, 223 U. S., 573, 591; *Norfolk & Western Railway Co.* vs. *West Virginia*, 236 U. S., 605, 610, collecting authorities).

**In *Downer* vs. *Dunaway*, "no motion was made for a continuance or change of venue" (53 F. [2d], at 588-9). The Court cited these facts as evidence that there was no real trial and specifically no real representation by counsel.

Judge Bryan remarked that a lack of zeal in assigned counsel "cannot be attributed to appellant who had no choice in the selection of his counsel." *Neal* vs. *Delaware* (103 U. S., at 396) is in accord:

> "Indulgence"—where the issue is of constitutional right—must be "granted to a prisoner whose life was at stake, and who was too poor to employ counsel of his own selection."

influences made fair trial impossible. So this Court in *Moore* vs. *Dempsey* recognized. So the Chief Justice forcibly pointed out below (Po., 174).

(2) As to the *place* of trial, the Alabama Court concludes that the judge's discretion may have been properly exercised because no threats of actual violence were recited in the venue petition and because there was opinion evidence that a fair trial could be had.

Neither point has merit:

To the first proposition, the whole course of events supplies the refutation.

Whether or not the petitioners—under military guard and locked in prison—heard threats, there is no doubt that the crowds were, and ever since March 25 had been, "threatening." All the military precautions show this, and the judge's order that they be strengthened confirm it.*

It was the opinion evidence of the sheriff and the National Guard commander that a fair trial could be had in Jackson County, or at least about as fair a trial as in any of the adjoining counties. The Kentucky Court has exposed the fallacy of relying, on an issue of this sort, upon "the mere opinion statements of witnesses." The witnesses "themselves might be influenced one way or

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*The Alabama Supreme Court itself wrote an opinion which is thus headnoted (*Thompson* vs. *State*, 117 Ala., 67; 23 So., 676):

> "It is error to deny a motion for a change of venue of an indictment for rape where the evidence showed that a special term of court was convened to try defendant, to satisfy a public demand for his speedy punishment, and that the public were so aroused against him that it required prompt executive and military action to prevent mob violence and his summary execution."

(It may be worth adding that, of course, changes of venue are granted all the time in communities and in circumstances where there is no threat or thought of mob violence,—on the simple ground that pervasive community feeling renders a fair trial impossible.)

other because of the prevailing sentiment" (*Estes* vs. *Commonwealth,* 229 Ky., 617, 619-620 [1929]).

"The proven and undisputed circumstances in the case," it concluded, "speak louder and more convincingly."*

(3) As to the *time* of trial—an issue as the Chief Justice points out more important in the circumstances of this case even than the issue of place—virtually the sole reliance of the Alabama Court is upon the circumstance that no motion for a continuance was made. There is only the faintest suggestion that had such a motion been made, its denial could have been defended.** That in the circumstances of the cases at bar the failure to make the motion is immaterial *Moore* vs. *Dempsey* decides.

(4) As to *equal protection* the Alabama Court remarks, as we know, that no *statute* stands in the way of negroes serving on juries. The point is immaterial so long as "custom of long standing" works the same result (*Rogers* vs. *Alabama,* and other cases, *supra,* p.).

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*For a curt declaration to the same effect, see *Brown* vs. *State,* 83 Miss., 645, 646.

The principle applies with particular force to the two witnesses called, the sheriff and the commander of the Guard,—who were not shown to have made a survey of sentiment in the county but who merely happened to be in the court room.

**That suggestion is contained in the reference to the Czolgosz case (Po., 164). The reference itself shows, however, that there is not analogy between the cases but antithesis:

Czolgosz's crime was, as the Court says, "committed in the presence of thousands of citizens." The issue in the cases at bar was whether "the evidence is to be believed."

Since the present Constitution of New York was adopted, "there has been but one capital case in New York which was not appealed to the Court of Appeals—that of Czolgosz" (The Committee on Amendment of the Law of the Association of the Bar of the City of New York, Bulletin 1 of 1924, pp. 5-6).

* * *

The issue here is of due process in the germinal sense,—of the simple requirement that the law's own *process* be due. The issue again is of equal protection to the race for whose benefit the Fourteenth Amendment was adopted. The issue is of just that persecution and discrimination in matters affecting the liberty and life of the citizen that the Amendment forbids. The issue is an issue that *Moore* vs. *Dempsey* decides.

The Chief Justice of the State Court concluded that "these defendants did not get that fair and impartial trial that is required by the Constitution" of the State. No less exacting are the standards set, and the requirements of due process and equal protection laid down, by the Constitution of the United States.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that rights under the Constitution of the United States be preserved and that to such an end writs of certiorari should be granted and this Court should review the decisions of the Supreme Court of Alabama and finally reverse them.

WALTER H. POLLAK,
Attorney for Petitioners.

WALTER H. POLLAK,
CARL S. STERN,
on the Brief.

APPENDIX.

ALABAMA CODE OF 1928.

"§3258. *Assignment or joinder of error unnecessary; duty of court.*—In cases taken to the supreme court or court of appeals under the provisions of this chapter, no assignment of errors or joinder in errors is necessary; but the court must consider all questions apparent on the record or reserved by bill of exceptions, and must render such judgment as the law demands. But the judgment of conviction must not be reversed because of error in the record, when the court is satisfied that no injury resulted therefrom to the defendant."

* * *

"§5202. *Objections to indictment for defect in grand jury; when not available; exceptions.*—No objection can be taken to an indictment, by plea in abatement or otherwise, on the ground that any member of the grand jury was not legally qualified, or that the grand jurors were not legally drawn or summoned, or on any other ground going to the formation of the grand jury, except that the jurors were not drawn in the presence of the officers designated by law; and neither this objection nor any other can be taken to the formation of a special grand jury summoned by the direction of the court."

* * *

"§5203. *When such plea filed; is sustained, new indictment preferred; limitation of prosecution.*—A plea to an indictment, on the ground that the grand jurors by whom it was found were not drawn in the presence of the officers designated by law, must if accused has been arrested be filed at the session at which the indictment is found, and if accused has not been arrested, it must be filed at the first session at which it is practicable after defendant's arrest; and in all cases before a plea to the merits; if sustained, the defendant must not be discharged, but must be held in custody or bailed, as the case may be, to answer another indictment at the same or the next term of the court; and the time elapsing between the first and second indictments, in such case, must not be computed as a part of the period limited by law for the prosecution of the offense."

* * *

"§5407. *Punishment of rape.*—Any person who is guilty of the crime of rape must, on conviction, be punished, at the discretion of the jury, by death or imprisonment in the penitentiary for not less than ten years."

* * *

"§5567. *When Counsel appointed for defendant in capital case.*—If the defendant is indicted for a capital offense, and is unable to employ counsel, the court must appoint counsel for him, not exceeding two, who must be allowed access to him, if confined, at all reasonable hours."

* * *

"§5570. *Trial, joint or several, at the election of either defendant.*—When two or more defendants are jointly indicted, they must be tried, either jointly or separately as either may elect."

* * *

"§5579. *Change of venue; trial removed on defendant's application, etc.*—Any person charged with an indictable offense may have his trial removed to another county, on making application to the court, setting forth specifically the reasons why he cannot have a fair and impartial trial in the county in which the indictment is found; which application must be sworn to by him and must be made as early as practicable before the trial, or may be made after conviction, on new trial being granted. The refusal of such application may, after final judgment, be reviewed and revised on appeal, and the supreme court or court of appeals shall reverse and remand or render such judgment on said application, as it may deem right, without any presumption in favor of the judgment or ruling of the lower court on said application. If the defendant is in confinement, the application may be heard and determined without the personal presence of the defendant in court."

* * *

"§5580. *Trial judge may ex mero motu order change of venue.*—The trial judge may, with the consent of the defendant, ex mero motu, direct and order a change of venue as is authorized in the preceding section, whenever in his judgment there is danger of mob violence, and it is advisable to have a military guard to protect the defendant from mob violence."

* * *

"§6088. *Appeals from decision on motions for new trials.*—Whenever a motion for a new trial shall be granted or refused by the circuit court or probate court, in any civil or criminal case at law, either party in a civil case, or the defendant in a criminal case may except to the decision of the court and shall reduce to writing the substance of the evidence in the case, and also the decision of the court on the motion and the evidence taken in support of the motion and the decision of the court shall be included in the bill of exceptions which shall be a part of the record in the cause, and the appellant may assign for error that the court below improperly granted or refused to grant a new trial, and the appellate court may grant new trials, or correct any error of the circuit court and court of like jurisdiction, or probate court in granting or refusing the same. And no presumption in favor of the correctness of the judgment of the court appealed from, shall be indulged by the appellate court."

* * *

"§8630. *Objections to indictments; how taken.*—No objection to an indictment on any ground going to the formation of the grand jury which found the same can be taken to the indictment, except by plea in abatement to the indictment; and no objection can be taken to an indictment by plea in abatement except upon the ground that the grand jurors who found the indictment were not drawn by the officer designated by law to draw the same; and neither this objection, nor any other, can be taken to the formation of a special grand jury summoned by the direction of the court."

* * *

"§8631. *Plea in abatement; when filed.*—Any plea in abatement to an indictment must be filed at the first session at which the indictment was found, if the accused has been arrested, or if the accused has not been arrested, such plea in abatement must be filed at the first session at which it is practicable after the defendant has been arrested and in all cases such plea in abatement must be filed before the plea to the merits."

* * *

"§8649. *Two or more capital cases set for the same day; juries for.*—Whenever the judge of any court trying capital felonies shall deem it proper to set two or more capital cases for trial on the same day, said judge may draw and have summoned one jury or one venire facias of petit jurors for the trial of all such cases so set for trial on the same day."

* * *

"Rule of Practice 31. *Severance in criminal cases.*—Where two or more persons, charged with a capital offense, are jointly indicted, either of them is entitled to demand a severance; but such right shall be considered as waived, unless claimed at or before the time of arraignment, or, at latest, when the court, at any term, sets a day for the trial of the case, and makes an order to summon a special venire. In other than capital offenses, a severance may be demanded at any time before the case regularly goes to the jury" (Rules of Practice of the Circuit and Inferior Courts of Common Law Jurisdiction, Alabama Code of 1928, p. 1938).

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Supreme Court of the United States

OCTOBER TERM 1932.

Nos. 98, 99, 100.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT,
and OLEN MONTGOMERY,
Petitioners,
vs.
THE STATE OF ALABAMA.

HAYWOOD PATTERSON,
Petitioner,
vs.
THE STATE OF ALABAMA.

CHARLIE WEEMS and CLARENCE NORRIS,
Petitioners,
vs.
THE STATE OF ALABAMA.

BRIEF FOR PETITIONERS.

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SUBJECT INDEX.

PAGES

Opinions below 1-2

Jurisdiction 2-5

Statement of cases 6-33

  Course of events 6-17

    Alleged rape on March 25; arrest that day.. 6-7

    Mayor and local leaders "plead for peace" March 25 8

    Governor at Sheriff's request calls out National Guard March 25 8

    Special grand jury summoned and special session of court called March 26 8-9

    Defendants indicted March 31 9

    Whole Scottsboro bar "appointed" to represent defendants on arraignment March 31 9-10

    Appointment invalid 10

    Writ of arrest issued and Sheriff directed to serve jurors March 31 10

    Sheriff's return April 4 10

    No counsel employed by defendants and no opportunity to employ 10

    No true appointment of counsel on April 6; lawyer who volunteers accepted 10-11

    Change of venue denied 11-12

    No severance demanded by defense 12

    Severances obtained by prosecution 12

    Defendants rearraigned April 6 12-13

PAGES

Weems trial April 6; Patterson trial April 7; Powell trial April 8 13
Negroes excluded from juries pursuant to "custom of long standing" 13
Jurors not interrogated about race prejudice 13
Only defense witnesses negroes under indictment 14
Defense declines to sum up to juries 14
Charges to the jury 14
Verdicts imposing death penalty 15
Sentence April 9 15
Appeal taken April 9 15
Motions for new trial 15-17
Defendants confined under military guard 17-18
Defendants of immature years 17-18
Defendants not residents of Alabama 18
No opportunity to employ counsel or communicate with families 18
Sentiment of community and atmosphere of trials 19-26
Inflammatory publications 19
Crowds 20-21
Size 20
Temper 21
Trial court orders soldiers to search citizens for arms 21
Military continuously present 22-23
Machine guns; tear gas bombs 23
Demonstrations 23-25
Applause 23-24
Music 24-25
Parents afraid to visit petitioners 25
Petitioners brought to trial at night 25
Guilt assumed by community 25-26

PAGES

Jurors share community sentiment 26-27

Internal evidence of lack of calmness and deliberation 27-32

Trial judge swayed by community feeling 32-33

Errors relied upon; summary of argument 34-35

Point I. Trial not fair and impartial; conviction and sentence a deprivation of liberty and life without due process: The cases identical in essence with *Moore* vs. *Dempsey* 36-47

Point II. Effective right to counsel denied and due process of law withheld 48-59

Point III. Systematic exclusion of negroes from juries a denial of equal protection 60-62

Point IV. State Court's misconceptions of federal constitutional issues; irrelevant and illogical rulings upon place and time of trial 63-71

Conclusion 72

Appendix 73-76

TABLE OF CASES.

PAGES
Aldridge vs. United States ... 57n
American Railway Express Co. vs. Levee ... 62
Brown vs. State ... 67n
Carter vs. Texas ... 54, 60-62
Commonwealth vs. O'Keefe ... 49n
Cooke vs. United States ... 5, 34, 48, 49n, 59
Downer vs. Dunaway ... 44n, 69n, 70n
Estes vs. Commonwealth ... 45, 55, 66
Frank vs. Mangum ... 42n
Franklin vs. South Carolina ... 48n, 70
Hicks vs. State ... 46n
Jackson vs. Commonwealth ... 49
Kansas City Southern Ry. vs. Albers Com. Co. ... 71
Lee vs. State ... 61n
Martin vs. Texas ... 5, 35, 60, 61
Mitchell vs. Commonwealth ... 50
Moore vs. Dempsey ... 4, 27, 34, 36-47, 62, 65, 68, 69n, 71
Neal vs. Delaware ... 35, 40n, 60, 61, 70n
Norfolk & Western Ry. vs. West Virginia ... 71
Pennoyer vs. Neff ... 34, 48
People vs. Nitti ... 50
Rogers vs. Alabama ... 5, 60-62, 65n
Sanchez vs. State ... 50
Seams vs. State ... 66n
Sheppard vs. State ... 49, 58, 59
Story vs. State ... 16n
Thompson vs. State ... 22n, 69
Truax vs. Corrigan ... 62
Tumey vs. Ohio ... 5
Virginia vs. Rives ... 60
Wood, in re ... 60, 62

CONSTITUTIONAL PROVISIONS AND STATUTES.

	PAGES
United States Constitution, 14th Amendment, Section 1	3, 4, 34n, 72
United States Judicial Code, Section 237-b	2
Alabama Code	
Sec. 3258	34, 73
" 5202	54n, 73
" 5203	54n, 73
" 5407	15, 32, 74
" 5567	10, 74
" 5570	12n, 74
" 5579	55, 74
" 5580	22, 75
" 6088	3, 75
" 8630	9n, 76

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BRIEF FOR PETITIONERS.

I.

Opinions of the court below.

The cases come to this Court pursuant to certiorari granted May 31, 1932 (Po., 187; Pa., 195; W., 179).

The opinion below in the Powell case is reported in 224 Alabama, 540; in the Patterson case in 224 Alabama, 531; in the Weems case in 224 Alabama, 524. The opinions appear in these records at Po., 145; Pa., 167; W., 152.

The chief opinion—the only opinion that expressly alludes to the whole set of records—is in the Powell case (see Po., 170; see also W., 163).

The majority of the Alabama Supreme Court in all the cases affirmed the convictions. Anderson, C. J., in all the cases dissented,—with opinion in the Powell case (Po., 171).

II.

Jurisdiction.

1.

The statutory provision sustaining the jurisdiction is Judicial Code, §237-b, as amended by Act of February 13, 1925, 43 Stat., 937.

2.

The date of the judgment to be reviewed is in all the cases March 24, 1932, when the opinions of affirmance below were handed down (Po., 145; Pa., 167; W., 151).

Petitions for rehearing were made in all the cases and on April 9, 1932, were denied (Po., 179; Pa., 188; W., 171).*

3.

The nature of the cases and the rulings below were such as to bring the cases within the jurisdictional provision of §237-b,—as appears from the following:

---

*The Alabama Supreme Court in all the cases fixed May 13, 1932, as the date of execution (Po., 144; Pa., 106; W., 151). It subsequently granted a stay pending certiorari proceedings here (Po., 184; Pa., 192; W., 175) and a further stay after certiorari had been allowed.

(a)

The Alabama Code (§6088)* authorizes the defendant in a criminal case to include in his bill of exceptions to the appellate court the ruling of the trial court denying a motion for new trial, and requires the appellate court to consider grounds of error specified in the motion.

The defendants in all the cases moved for new trial (as appears in detail under "(b)" below) and included as grounds, that the trials and convictions constituted denials of due process and equal protection in the respects here urged.

The defendants in all the cases "separately and severally" filed "a true and correct bill of exceptions," as the trial judge certified, and did this "within the time prescribed by law" (Po., 137; Pa., 161; W., 144; see also Certificates of Appeal, *ibid.*). The judge in all the cases "accordingly signed" the bills of exceptions and "allowed them of record as such" (*ibid.*).

The defendants in all the cases, upon appeal to the Alabama Supreme Court, included the motions for new trial in the bills of exceptions (Po., 53, *et seq.;* Pa., 53, *et seq.;* W., 64, *et seq.*).

(b)

The specific statements of federal constitutional rights in the motions for new trial appear at Po., 109-113 (see also pp. 55-6, 83-4, 85-6); Pa., 102-8 (see also pp. 57-60, 114-5, 116-7); W., 106-110 (see also pp. 66-8, 80-2, 83, 84).

The claims are:

That the denial of "a fair and impartial trial before an unbiased and unprejudiced jury" constituted a violation of rights under the Fourteenth Amendment (Po., 111; Pa., 104; W., 108); that the refusal of a change of venue was "a denial to the defendants of their rights under the Constitution of the United States, Amendment Fourteen, Section 1" (Po., 110; Pa., 104; W., 108); that the demonstration and excitement attending upon the trial constituted a denial of due process (Po., 83-4; Pa., 114-5; W., 80-1); that the overawing of the jury constituted a denial of due process (Po., 85; Pa., 116-7; W., 83); "that the defendants were compelled to go to trial represented by attorneys, who by their own admission in open court, stated that they were not prepared," and that this was a denial of due process (Po., 83; Pa., 114; W., 80); that "this is especially true because in fact the defendants were neither represented by counsel retained by them or anyone on their behalf authorized to make such retainer" (Po., 83; Pa., 114; W., 80; see also for an elaborate statement, Po., 110-1; Pa., 104-5; W., 108-9); that the trial of the defendants before juries from which qualified negroes were, "by reason of a custom of long standing" (Po., 84; Pa., 115; W., 82), excluded was a violation of the Fourteenth Amendment (Po., 113; Pa., 108; W., 110).

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*The Code sections appear in the Appendix in their numerical order in the 1928 compilation. The Appendix is bound with this brief.

(c)

The Alabama Supreme Court considered in terms whether "any right guaranteed to the defendants under the Constitution of the United States" had been "denied to the defendants in this case." It said that "the record shows that every such right of the defendants was duly observed and accorded them" (Po., 163-4).*

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*See also the reference to the Fourteenth Amendment at Po., 162.

4.

The following cases in this Court, among others, sustain the jurisdiction:

Moore vs. *Dempsey* (261 U. S., 86) establishes as an element of due process the right to an orderly and deliberate trial; *Cooke* vs. *United States* (267 U. S., 517) establishes as an element of due process an effective right to counsel; *Rogers* vs. *Alabama* (192 U. S., 226) condemns as a violation of the equal protection clause the trial of a defendant before a jury from which qualified members of his race are systematically excluded; *Tumey* vs. *Ohio* (273 U. S., 510) and *Martin* vs. *Texas* (200 U. S., 316, 319) illustrate that where the record in the state court raises such issues, this Court has jurisdiction to review the decision below upon direct attack.

III.

Statement of the cases.

The constitutional issues are presented upon undisputed facts. They are presented upon the records of the trial court, including the motions for new trial and the affidavits in support. Upon these issues the prosecution in its affidavits in opposition made no attempt at contradiction.*

In a single instance there is a shade of disagreement relevant to the constitutional issues between the affidavits upon the motions for new trial and the testimony of a witness heard upon the motions. We there take those minimum facts about which there is no dispute.

Course of events.

As a preliminary to the consideration of particular matters—newspaper publications, the rôle of the military, public demonstrations—bearing upon the issues of mob domination during trial, the denial of counsel, race discrimination, we first state the course of events in chronological outline.

On March 25, 1931, in the afternoon, there were on a freight train going south from Chattanooga into Alabama 7 white boys; the 9 negro boys who were subsequently brought to trial,—namely Patterson, the two Wrights and Williams, who were his associates and followers (Pa., 37, 39, 42, 44), and the 5 others;* a number of other negro boys,—according to all accounts at least 3 more, according to some still more (Po., 27, 36, 38, 41; Pa., 41, 47; W., 29, 50, 51, 54). Both the white and the black boys were in a "gondola," or open, car (Po., 22, 26, 33, 38, 41). There were also on the train two white young women, Mrs. Victoria Price and Miss Ruby Bates. According to their testimony they too were in the gondola car (Po., 22, 26).

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*Alabama recognizes the rule that uncontradicted statements in affidavits for a new trial are to be accepted as true (Po., 168). The Alabama Court reversed the conviction of a boy Eugene Williams, who was tried along with the other defendants in the Powell case, upon the showing in the new-trial affidavits that he was under 16 and therefore subject to prosecution only in the juvenile court (Po., 168-9).

The negro boys and the white boys began fighting, and the white boys, with the exception of one named Gilley, were thrown off the train. A message was sent by "wire" "to get every negro off of the train" (Po., 46). The message said nothing about any molestation of the girls but did report the fight between the two sets of boys (Pa., 33; W., 40).**

At the way-station of Paint Rock, southwest of Scottsboro, a sheriff's posse met the train "and got the bunch that was on the train" (Po., 46).*** Certainly on that day and apparently by that time, and before any reference to the girls had come into the matter, special deputy sheriffs were appointed (Po., 46).

---

*The Alabama Supreme Court, as just stated, reversed the conviction of the Williams boy because he was under 16; Roy Wright, who was 14 (Pa., 39), was not brought to trial with the others and was not convicted (see Pa., 173). The original 9 defendants have thus been reduced to 7 petitioners in this Court.

**The message was apparently a telegram (Po., 46, but see Pa., 33). It was not produced at the trial but there was no dispute as to its contents.

***That is, the posse seized all that were still on the train. Mrs. Price and Miss Bates testified all through the trials that they were raped by all the 9 negroes apprehended and by 3 others,—6 boys assailing each. The other 3 were not apprehended or brought to trial. According to other witnesses there were 14 or more negroes on the train during the fight between the two sets of boys (Po., 27, 36, 38, 41; Pa., 41, 47; W., 29, 50, 54).

At Paint Rock the notion got abroad that some injury had been done to the girls. The girls and the prisoners were taken at once to Scottsboro, the county seat. Mrs. Price and Miss Bates were examined by physicians,—upon their own statements within two hours, or perhaps with an hour, of the "occurrence" (Po., 23-4; W., 32).

At Scottsboro the excitement became intense. According to the next day's local newspaper a "great crowd," a "threatening crowd," gathered (Po., 8; Pa., 7; W., 7); the "Mayor and other local leaders plead for peace and to let the law take its course" (Po., 8; Pa., 7; W., 7). According to another contemporaneous newspaper account it was due to the Sheriff and his band of deputies that the crowd did not enter the jail and seize the negroes (Po., 17; Pa., 16; W., 17).

The Sheriff on the same day requested the Governor to call out the National Guard (Po., 8; Pa., 7; W., 7). At 9 o'clock in the evening the Adjutant-General, acting by the Governor's order, telephoned from Montgomery to Major Starnes at Guntersville to take hold of the situation with his men (Po., 96; Pa., 87; W., 94). Major Starnes with other officers and 3 companies arrived at Scottsboro within 3 hours after the call (Po., 8; Pa., 7; W., 7).

Thereafter the prisoners were continuously under Major Starnes' guard. For their protection he employed "picked men" (Po., 96; Pa., 87; W., 94).

On March 26, the day after the supposed crime, Circuit Judge Hawkins summoned the Grand Jury to reconvene and called a special session of the Circuit Court (Po., 139-41; Pa., 162-4; W., 147-9). All subsequent proceedings were by special Grand Jury,* a special venire of the petit jury and at a special session of the Circuit Court (see *e. g.*, Po., 1, 21).

On March 31 all defendants were indicted (Po., 1; Pa., 1; W., 1). They were all subsequently brought to trial only for an alleged rape on Victoria Price effected in concert. Four indictments were, however, at this time placed against each defendant: this collective indictment in the Price case; a similar collective indictment in the Bates case, and two individual indictments in the cases respectively of Mrs. Price and Miss Bates (for a summary of this day's proceedings see Po., 10-14; Pa., 9-13; W., 9-13).

There was a form of arraignment on March 31 (Po., 141; Pa., 164; W., 149; for allusion thereto in the opinions below, see Po., 149; Pa., 170; W., 152). But, as we shall see, the defendants were definitively arraigned only on April 6, the day trial commenced (*infra*, p. 12).

"For the purpose of arraigning the defendants" Judge Hawkins purported to appoint all the members of the Scottsboro bar (Po., 88; Pa., 79; W., 86).** He "anticipated them to continue to help them if no counsel appears" (Po., 88; Pa., 79; W., 86).

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*No objection "can be taken to the formation of a special grand jury summoned by the direction of the court" (Alabama Code, §8630, Appendix).

**The minutes of March 31 show the arraignment of that date but contain no reference to an appointment of counsel, though there is a recital of appearance "represented by counsel" (Po., 141; Pa., 164; W., 149). That definitely the defendants never *employed* any counsel until after the trials were over and that the only proceedings that even in the view of the majority of the Court below constituted an *appointment* of counsel occurred on April 6, see *infra*, pages 10-11, 18, 50-53.

The appointment was invalid under the Alabama law, which permits the designation of "not exceeding two" (Alabama Code, §5567, quoted in Appendix). Indeed, it is said in affidavits, and not contradicted, that the Judge "released" all these lawyers from this appointment (Po., 83; Pa., 114-5; W., 81). And it is shown by the record that one of the lawyers—a member, according to the Chief Justice, of "one of the leading, if not the leading, firm" (Po., 172)—thereafter joined the prosecution as special counsel and actively participated at all the trials in behalf of the prosecution.*

On March 31 the Court set April 6 as the date of trial for all the cases (Po., 141-2; Pa., 164; W., 149). The same day a writ of arrest issued (Po., 2; Pa., 1-2; W., 2). The Court directed the Sheriff to serve the jurors for trial on the 6th and to make a return showing the service. On Saturday, April 4, the Sheriff made his return (Po., 142; Pa., 165; W., 150).

Monday, April 6, was, as just stated, the day set for the trial of all the cases. None of the defendants had up to that time employed counsel or had had any opportunity to employ counsel. Nor had the parents of any of them (Po., 80, 83, 76; Pa., 111-2, 114-5, 98; W., 78, 80-1, 73).

The only way fully to get the flavor of the proceedings—crucially important—in relation to the appointment of counsel on April 6, is to read them through; they appear in identical language at Po., 87-92; Pa., 78-82; W., 85-9:

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*For Mr. Proctor's statement that he felt free to do this and the trial Court's acquiescence, see Po., 91; Pa., 81-2; W., 88-9.

There had evidently been some notion that a Mr. Roddy of Chattanooga might appear for the boys.* The Court did not wish to "impose" upon local counsel. Mr. Roddy, however, declared, "I don't appear as counsel," but "I would like to appear along with counsel that your Honor has indicated you would appoint." A member of the local bar, Mr. Moody, spoke up and said, "Of course if your Honor purposes to appoint us,** I am willing to go on with it." Mr. Roddy explained, "They have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested." "I think the boys would be better off if I step entirely out of the case." Mr. Roddy therefore said,—"I would like for your Honor to go ahead and appoint counsel."

The Court, however, still hesitated, saying, "If Mr. Roddy will appear, I wouldn't of course, I would not appoint anybody." Mr. Roddy declared, "If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent." Mr. Moody said, "I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances." The Court ruled, "All right, all the lawyers that will."

Mr. Roddy handed up a half-page petition for a change of venue with exhibits setting forth articles in the Jackson County Sentinel published in Scottsboro, and in a Chattanooga and a Montgomery paper (Po., 92, 4-17; Pa., 82, 3-17; W., 89, 4-18). The Court took testimony from two persons, both of whom happened to be present in the court room,—Sheriff Wann and Major Starnes (Po., 18-21; Pa., 17-20; W., 18-21; for the same testimony set forth more fully in question and answer form, see Po., 93-8; Pa., 83-9; W., 90-5,—exhibits on motion for new trial). Judge Hawkins inquired whether there was "anything else for the defendants" (Po., 98; Pa., 89; W., 96), and Mr. Roddy said, "No." The Court decided: "Well, the motion is overruled, gentlemen" (Po., 98; Pa., 89; W., 96). The defendants excepted (Po., 21, 98; Pa., 20, 89; W., 22, 96).

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*See Po., 11-12; Pa., 10-11; W., 11.

**Both Mr. Moody and the Court, even on April 6, seem to have had the notion that a general appointment of the whole body of members of the local bar might be valid. Compare the Court's references to "imposing on you *all*" (Po., 89; Pa., 79; W., 86) and to "*all* the lawyers" (Po., 91; Pa., 81; W., 88).

The prosecutor asked the defense whether it "demanded" a severance.* Mr. Roddy said, "No" (Po., 99; Pa., 89; W., 96).

The Court then inquired of the prosecutor whether his side wished a severance, and the prosecutor asked for one and in the Court's discretion obtained it (W., 96-7).**

In the subsequent trials the defense again demanded no severances (Pa., 20-1; Po., 21-2). But the prosecution obtained a severance of the case of Patterson, the leader (W., 53, 55; Pa., 42), from the others (Pa., 20).

There was, as we have said, some sort of arraignment on March 31. But each defendant was separately and "duly arraigned" at the beginning of his trial,—on April 6, 7 and 8 (W., 99, 3; Pa., 92, 2; Po., 101, 3).

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*The Alabama Code (§5570) provides that "when two or more defendants are jointly indicted, they must be tried either jointly or separately, as either may elect." Practice Rule 31 is concerned with the mechanics of making the right good (both appear in the Appendix).

**The prosecutor elected to try in the first case two of the older boys, Norris and Weems. His first desire was to try Roy Wright with them. This boy had apparently given a statement implicating the other defendants (Po., 7; Pa., 6; W., 6; *infra*, pp. 14, 57-8). But he was 14 years old, and his youth was apparent. The Court, in order to avoid a delay while the boy's age was being definitely established, suggested that he be tried later. And he was not in fact tried with any of these defendants (Po., 99; Pa., 89-90; W., 96-7).

There was no motion for a continuance in any of the cases. The trial of Weems and Norris was commenced on April 6 and concluded on the 7th (W., 3; Pa., 2, 27); the trial of Patterson was commenced on the 7th and concluded on the 8th (Pa., 2, 41; Po., 2-4); the trial of Powell and his four co-defendants was commenced and concluded on the 8th (Po., 2-4).

The juries were composed exclusively of members of the white race. Although "a large number of negro land-owners were qualified jurors" "there was not one negro selected for the entire trial." The exclusion was "by reason of a custom of long standing" (Po., 84, not denied; Pa., 115, not denied; W., 82, not denied).

The record does not show what interrogation, if any, was given to the jurors before they were accepted for service. It does, however, show that the jurors were not, as a regular thing certainly, asked whether they entertained a prejudice against negroes. This fact is flatly charged both in the petition for new trial (Po., 112-3; Pa., 107-8; W., 110) and in the affidavits in support (Po., 86; Pa., 117; W., 83). It is undenied in the answering affidavits. Upon a hearing held in open court on the new-trial motion, at which those jurors who participated in the third case were called as witnesses, the prosecution repeatedly and successfully objected to the question whether they were interrogated about race prejudice (Po., 123-4, 125, 126, *et seq.;* Pa., 147, 148, 150, *et seq.;* W., 119, 120, 122, *et seq.*).*

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*It could have been said without qualification that *no* juror was interrogated upon this subject had not the juror Elkins intimated a contrary recollection (Po., 119; Pa., 142; W., 114). He added, however, that he "couldn't say positively who asked that question," and "I don't remember just what the question was about."

The only witnesses the defense called in any of the cases were negroes under indictment for the crime charged. In the two cases first tried witnesses called by the defense gave testimony which undermined the cause of a co-defendant or of the sole defendant. Norris testified in the Weems case that there had been raping by negro boys other than himself (W., 56);* young Roy Wright gave like testimony in the Patterson case (Pa., 39-41).

The records show no opening address for any defendant and no closing address. In two cases the records show affirmatively that the defense, in the presence of the jury, elected not to sum up to the jury (Po., 48; W., 59). In the first case "defendants' counsel stated to the court that they did not care to argue the case to the jury, but counsel for the State stated to the court that they did wish to argue the case to the jury." "At the conclusion of said argument of counsel for the State to the jury counsel for defendants stated that they still did not wish to argue the case to the jury," but the Court "permitted counsel for the State to further argue the case to the jury."**

The Court's charges in the three cases were stereotyped and virtually identical (W., 60-3; Pa., 50-3; Po., 48-53). He told the first jury: "Let me have your attention for a few moments and then you will have this case" (W., 60). So too he asked the second jury to

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*He subsequently recanted this testimony (W., 130-5).

**For the significance that the Alabama Chief Justice with his practical experience of litigation attaches to the circumstance that summing up was waived by the defense—and waived without a countervailing waiver from the prosecution—see Po., 173.

"let me have your attention for a few moments and we will finish the trial of this case" (Pa., 50).

In no case did counsel who purported to appear for the defendants take any exceptions to the charge or submit any charges of their own (W., 63; Pa., 53; Po., 53).

In all the cases and as to all the defendants the juries brought in verdicts of guilty. The punishment for rape may be anywhere from 10 years' imprisonment to death, "at the discretion of the jury" (Alabama Code, §5407, Appendix). Upon all the defendants the juries imposed the death penalty (Po., 3; Pa., 2; W., 3).

On April 9 all the defendants were sentenced. None of them said anything as a reason why sentence should not be imposed upon him,—not even the 14 year old boy Williams, nor Mr. Roddy or Mr. Moody in his behalf (Po., 3; Pa., 3; W., 3).* Execution was in all cases set for July 10 (Po., 3; Pa., 3; W., 3). But appeal was on April 9 taken to the Alabama Supreme Court, and the sentences were suspended pending its disposition (Po., 3; Pa., 3; W., 3). Mr. Roddy and Mr. Moody at this time filed a motion of two paragraphs to set aside the verdict and for new trial (Po., 53; Pa., 53-4; W., 63-4).

On April 18 the death warrants were written (Po., 3; Pa., 3; W., 3).

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*Mr. Roddy did subsequently make an affidavit confirming that Williams was under 16 (Po., 117).

In the course of the next few weeks the defendants' families retained for the boys General Chamlee of Chattanooga (Po., 75; Pa., 97; W., 73). On May 6 "by permission of the Court" the motion theretofore made for a new trial was amended by General Chamlee and a new motion with copious affidavits filed (Po., 53-80, 80-108; Pa., 54-102, 102-141; W., 64-77, 77-106); on June 5 the application for new trial was somewhat expanded and a second amended motion filed (Po., 108-17; Pa., 102-111;* W., 106-113). It was these amended motions for new trial that asserted—and the petitions and supporting affidavits that laid the factual foundations for—the claims of constitutional right.

The prosecution at various dates after June 5 submitted numerous affidavits in opposition (Po., 132-7; Pa., 155-60; W., 127-30; 135-144). The prosecution's affidavits were primarily concerned with the girls' characters,—specifically with the point whether or not they had, as charged in the moving affidavits (Pa., 63-77, 133-7; Po., 102-5; W., 99-103), committed acts of prostitution with negro men and had the reputation of having done so (Pa., 156-60; Po., 132-6; W., 127-30, 135-7).**

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*In the Patterson case the filing was on May 19 (Pa., 102).

**The Alabama rules on the subject are settled by *Story* vs. *State* (178 Ala., 98), and by the decisions below:

In the *Story* case the prosecution was of a negro for rape upon a white woman. There was a defense of consent. At the trial the general fact that the prosecutrix was a prostitute was "confessed" (178 Ala., at 101), but evidence was excluded that she had a specific reputation for unchaste conduct with negroes. The gist of the Alabama Supreme Court's decision in the *Story* case is: The infamy involved in a white woman's immorality with negroes is so great that no matter how clearly the general fact of prostitution be established, it will not be deduced that she might have been guilty of immoral conduct with negroes; the defense therefore had a right to show that the particular white woman had the reputation of misconducting herself with negroes; for the exclusion of the evidence the conviction was reversed.

In the cases at bar the Alabama Supreme Court ruled that because the negroes denied all intercourse with the white women there was no issue of consent on the part of the women and the whole question of

(*Footnote continued on next page.*)

The prosecution left unchallenged those allegations in the moving affidavits on which were rested the contentions that fair trial had been withheld, the right to counsel denied, and race discrimination practiced in violation of the Constitution of the United States.

On June 22 "the final hearing of said motion for new trial as last amended" was had (Po., 136; Pa., 160; W., 143). On the same day the motion was in all the cases denied (Po., 137; Pa., 161; W., 144). Appeal was taken from the denial (Certificate of Appeal, Po., 137-8; Pa., 161-2; W., 144-5).

We have stated in general outline the course of proceedings. It is in the light of accompanying facts—the quality and circumstances of the defendants; the atmosphere of the place at the time as reflected in the press, in the crowds, in the display of military force; the influence of these things upon the juries—that the questions arise whether in the constitutional sense the trial was fair, the right to counsel effective, and justice free from discrimination by reason of race.

The circumstances of defendants' confinement.

The defendants were all ignorant, all but one illiterate (Po., 5, 84; Pa., 4, 115; W., 4, 81). All were of "immature years" (Po., 84; Pa., 115, 99; W., 81). Just how immature we do not in all cases know. Of Patterson, the

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(Footnote continued from preceding page.)

their having a reputation for unchastity with negroes was immaterial (Po., 163; Pa., 179; W., 163). The Court approved too the ruling of the trial court sustaining the prosecution's objection to the question put to Victoria Price on cross-examination,—"Did you ever practice prostitution?" (Pa., 171, 26).

leader, we know only that he was "under 21 years of age" (Pa., 99). Of those whose ages we have the oldest was 19 (Pa., 42, 43).

None of the defendants lived in Scottsboro or in Jackson County or in Alabama: Patterson and Wright had their homes in Chattanooga (Pa., 36; Po., 37); Roberson in Memphis (Po., 36); Weems, Norris and Powell in Atlanta (W., 52, 55; Po., 33); Montgomery in Monroe, Ga. (Po., 39).

All the defendants were continuously in confinement under military guard from the evening of March 25 to and through the trials,—for a day in Scottsboro, generally in Gadsden (Po., 80; Pa., 111-2; W., 78).

The defendants thus describe their condition on the day trial started: They "had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinsfolks or friends and had no chance to procure witnesses and no opportunity to make bond or to communicate with friends on the outside of the jail" (Po., 80; Pa., 112; W., 78). There is no contradiction or qualification.* And the father of the Patterson boy, the mother of the Williams boy and the mother of the two Wright boys unite in the declaration that—even to see their sons, awaiting trial or undergoing the ordeal of trial—they were "afraid to go to Scottsboro," "afraid" even "to go to Gadsden" (Pa., 99, 100, 102; Po., 77, 78, 79; W., 74-5, 76, 77).

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*The prosecution had peculiar opportunity to contradict allegations concerning the circumstances of the prisoners' confinement, and did in numerous affidavits purport to contradict allegations concerning the alleged maltreatment of a particular prisoner (see the succession of affidavits appearing in W., 137-43).

Sentiment of community and atmosphere of trials.

The charge was the "most serious charge known on the statute books of Alabama, rape" (Jackson County Sentinel, April 2, Po., 10; Pa., 9; W., 9-10). The charge was of rape perpetrated upon white girls by blacks. It was of rape so perpetrated 12 times. "This crime stands without parallel in crime history" (Jackson County Sentinel, *ibid.*, Po. 8; Pa., 8; W., 8).

"The character of the crime was such as to arouse the indignation of the people, not only in Jackson and the adjoining counties, but everywhere, where womanhood is revered, and the sanctity of their persons is respected" (Powell Opinion, Po., 156).

The press. Publications in the Jackson County Sentinel, begining on March 26, the day after the occurrence, and including an editorial on April 3, the Friday before the Monday on which the trials commenced, reflect—and could not have failed to intensify—local feeling (W., 5-18; Po., 5-17; Pa., 5-17). This Court, we are sure, will read the articles and there is no need of extended quotation. But consider the implications of this sentence in the first article—under a 7-headline spread—, a sentence that immediately follows the "crime without parallel" reference:

> "Calm thinking citizens last night realized that *while* this was the most atrocious crime charged in our county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process" (Po., 8-9; Pa., 8; W., 8; our italics).

"Sensational and damaging" is the characterization the Alabama Supreme Court in its principal opinion accepted for these articles appearing in the County newspaper (Po., 153).

Crowds. "Such a happening," as the Court below remarks (Po., 154), "made the basis of the charge against the defendants, was calculated to draw to Scottsboro, on the occasion of the trial, large crowds. It would be surprising if it did not." Sheriff Wann, testifying on April 6, was put the following question and gave the following answer concerning conditions on that day,—the day the trials commenced:

> "Q. And there is a great throng around this court house right now that would come in if you did not have the troops?
>
> A. Yes, sir; they are from different counties here today" (Po., 95; Pa., 85; W., 92).*

Numbers are notoriously difficult to estimate. The only clear facts as to the *size* of the crowds at the trials are the following:

Scottsboro has a population of about 2,500.** The statement in the motions for new trial that a crowd of 10,000 was gathered in Scottsboro at the trials (Po., 111; Pa., 105; W., 109) is not contradicted in the opposing affidavits. Mr. Venson, a demonstrator of Ford cars, called as a witness for the prosecution in opposition to the new-trial motions, did not, indeed, "think there were 10,000." He "wouldn't guess there was 5,000 people at any one time on the street; I don't think so, but I don't know." But he agreed that "there was a big crowd," "a crowd in town all day," "a crowd around the court house" (Po., 131, Pa., 154-5; W., 126).

Certain it is that the Ford Motor Company found it worth while on Monday, the 6th, to order Mr. Venson

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*The Sentinel on March 26 applied the same adjective, "*great*," to "the crowd gathered at the jail" on March 25 (Po., 8; Pa., 7; W., 7). For the trial it predicted a "*tremendous* crowd" (Po., 15; Pa., 14; W., 16).

**2304 in 1930 (15th Census, Vol. I, p. 85).

to bring on, for Tuesday, a demonstration of "about 28 trucks,"—"a Ford caravan of commercial trucks" (Po., 130-1; Pa., 154; W., 126).

The *temper* of the crowds is revealed:

On March 25—the day of the alleged occurrence and of the arrest—"the Mayor and public officials had to make speeches to try to persuade the mob to adjourn" (Po., 84; Pa., 115; W., 81). There is no denial from the Mayor or from any public official or from anyone. There is on the contrary overwhelming contemporaneous confirmation. The Sentinel of March 26 tells us not only that the crowd "gathered at the jail" on March 25 was a "great crowd" but in so many words that it was a "threatening crowd" (Po., 8; Pa., 7; W., 7). The Montgomery Advertiser, also writing of the events of March 25, declared in an editorial that but for the Sheriff's prompt action "those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls" (Po., 17; Pa., 16; W., 17).

The feeling of the crowds was no different when trial commenced. On April 6 the "great throng," we have the Sheriff's word for it, would—but for the troops—have come into "this court house right now" (*supra*, p. 20).

The responsible officials showed by their actions the estimate that at the time they put upon the public's temper:

The Mayor of the town "plead for peace." The Sheriff of the County called upon the Governor to order out the Guard. The Judge of the Circuit instructed the commanding officer to search for arms citizens coming into the court room or even into the court house grounds (Starnes, Po., 96-7; Pa., 128; W., 94).

The military. "Every step that was taken from the arrest and arraignment to the sentence was accompanied by the military," says the Chief Justice,—and he finds the circumstance profoundly significant (Po., 172). The State's legislation certifies that he is right:

> "The trial judge may, with the consent of the defendant, ex mero motu, direct and order a change of venue as is authorized in the preceding section, whenever in his judgment there is danger of mob violence, and it is advisable to have a military guard to protect the defendant from mob violence" (Alabama Code, §5580; Appendix).*

The record shows the following concerning the "danger of mob violence" and the need of "protecting the defendants":

The Sheriff's regular force was insufficient to safeguard the prisoners. The Special Deputy Sheriffs —who explained in an affidavit submitted by the prosecution that their function was "to protect the prisoners from annoyance and harm of any kind" (W., 142)— were insufficient. Sheriff Wann—on the day the trials commenced—was asked and answered as follows:

> "Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?
>
> A. Yes, sir" (Po., 94; Pa., 125; W., 91).

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*See also the strong declaration of the significance of the military's being called out in a rape case in *Thompson* vs. *State*, 117 Ala., 67, quoted *infra*, pp. 68-9.

Major Starnes—also on the day the trials commenced—was asked whether his "units of the National Guard have protected" the defendants, and "have been with them on every appearance they have made in this court house",—and answered, "That is correct." "Every time it has been necessary" (Po., 97; Pa., 128; W., 94).

The record shows the size and equipment of the military force. "A picked group of twenty-five enlisted men and two officers from two of my companies" was employed to bring the defendants over for arraignment, Major Starnes tells us (Po., 96; Pa., 127; W., 94). On the day the trials commenced this officer had with him about 10 other officers and over 100 enlisted men. There were "five units represented" (Starnes, Po., 96; Pa., 127; W., 93).

The Guard had their rifles of course. But they did not rely upon their rifles alone. "I think there were eight machine guns around here" on the day the trials were concluded, says a juror who served that day. "There were some boxes of tear bombs sitting around" (Po., 121; Pa., 144; W., 116).

Demonstrations. The Guard did successfully prevent overt acts of violence against the prisoners. It could not prevent demonstrations of public feeling. The verdict in the Weems case determined the result as to two defendants. It foreshadowed the results as to Patterson, on trial that day, and as to the five defendants to be tried the next day. Upon the report of the jury imposing the death penalty "there was a demonstration in the court house by citizens clapping their hands and hollowing and shouting." "Soon thereafter a demonstration broke out on the streets of Scottsboro" (Po., 81; Pa., 112; W., 79).

The foregoing statements are not contradicted. They are on the contrary confirmed by the testimony of persons who were waiting to be called as jurors in the third trial and who were called as jurors (Po., 118, 120, 124, 125, *et seq.;* see *infra,* p. 27). These statements are further confirmed by the testimony of Major Starnes: "There was considerable demonstration in the court room when the jury rendered their verdict, by yelling and clapping of hands in the court room here" (Pa., 140).*

The only point bearing upon the issues here at which there is a shade of disagreement over the facts, concerns the part played by a band when the Weems verdict came in. We rest our argumentation, as we have already said, upon facts undisputed and therefore, where there is any element of uncertainty, upon minimum facts. We summarize however the different statements in order to determine what the minimum facts are:

The defense in its affidavits for a new trial set forth in detail that at the time the Weems jury reported, the Hosiery Mill band paraded and played such tunes as "Hail, Hail, the Gang's All Here" and "There Will Be a Hot Time in the Old Town Tonight" (Pa., 113; Po., 82; W., 80). The prosecution's affidavits did not contradict or qualify this statement. At the hearing in open court upon the new-trial motion the prosecution produced no witness from the band. It did produce Mr. Venson, the demonstrator of Ford cars. He testified that while there was noise on this occasion, it was caused by his use of a graphophone with an amplifier. The Hosiery Mill band did play, he said, but it was later in the afternoon,—at six o'clock when the National Guard had its guard mount (Pa., 154-5; Po., 130-2; W., 125-7).

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*Captain Fricke, an aide of Major Starnes, in immediate charge in the court room, testifies in express accord to "the applause in the court room" (Pa., 141).

The Alabama Supreme Court noted that the charge of demonstration in the court room was confirmed but adopted a rule of practice which precludes the proving of such matters by "evidence *aliunde*" (Pa., 177-8).

The minimum facts thus are: When the verdict came in there was music in the streets; the sound was amplified; the Hosiery Mill band performed the same afternoon; the tunes played were tunes like the tunes named or the very tunes.

Atmosphere is elusive,—difficult after the event to recapture. We have tried to classify the direct evidence. It remains to note the significance of certain circumstances or events that we have not been able to group under particular captions.

The defendants were boys on trial for their lives. The press was full of the danger of their position. Yet no member of their families visited them in Scottsboro or even in Gadsden, 40 miles off. "Colored people," they were "afraid to go to Scottsboro," "afraid to go to Gadsden."*

Major Starnes had, on April 6, a force in Scottsboro with machine guns and tear gas bombs. He had a "picked group" for the immediate protection of the prisoners. With all these precautions it was thought wise to carry the prisoners from Gadsden in the quietest hours of the night,—they "arrived here at 5:15 this morning" (Starnes, April 6, Po., 97; Pa., 88; W., 95).

Unofficial and even official expression asserted or—even more significant—*assumed* guilt. It was because, as early as March 25—the very day of the occurrence—the evidence was accepted as "so conclusive as to be almost perfect," that "calm thinking citizens" came to the conclusion "that the ends of justice could be best served by a legal process" (*supra*, p. 19).**

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*The affiants requested that even the motion for new trial be heard elsewhere than in Scottsboro (Po., 79-80; Pa., 102; W., 77).

**For a like statement in the Sentinel of April 2, see Po., 11; Pa., 10; W., 10-11.

Major Starnes had it as his duty to protect the prisoners and did so. But even this official on the morning of April 6—before one item of evidence had been presented—referred, in testimony publicly given, to "the attack" as having "occurred" (Po., 96; Pa., 87; W., 94).

Community sentiment shared by juries and reflected in verdicts.

Jackson County is a rural community of about 35,000 inhabitants.* A jury drawn from a community so small and so closely knit must reflect community feeling. The juries did:

Of necessity the Jackson County jurors had their attention called to the articles in the Jackson County Sentinel. All the 100 had their names printed on April 2 in the article that explained that the negroes had been "indicted on the most serious charges known on the statute books",—an article that explained too that "the matter will" (unless it "becomes necessary to try each defendant separately") "be made brief" (Po., 12-14; Pa., 11-13; W., 11-13). The only juror that anyone, upon the hearing of the motion for new trial, bothered to ask whether he read the newspapers said he had. He "read the Scottsboro papers about the attack on these girls." He believed, too, that he "read the Chattanooga papers. I think those papers said these men, or some of them, had confessed their guilt" (Po., 119; Pa., 142; W., 114).**

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*15th Census, Vol. I, page 76.

**For references in the newspapers to some negro boys implicating others, see Po., 7, 17; Pa., 6, 16; W., 6, 18.

No safeguards were thrown around the jurors during the trials, and they continued to read the newspapers (Po., 85; Pa., 116; W., 83).

* * * * * *

All the jurors were summoned for April 6. Most or all must have been there when Major Starnes in advance of the production of evidence referred to "the attack" as an established fact.

We have noted the applause that greeted the rendition of the verdict in the first case. That applause was heard by the jury then trying the second case. Captain Fricke, who was in immediate charge in the court room, testifies that when the Weems verdict came in and "the applause in the court room" broke out, the jury in the Patterson case was in the jury room; that the jury room was about 30 feet away (Pa., 141); that the transom was partly open (Pa., 141).

The defense requested that the members of the second jury be produced at the hearing of the motion for new trial. Through some misunderstanding it was the members of the third jury that were in fact produced. That jury was not as a body present at the rendition of the first verdict. But one juror remembers "hollering" (Po., 120; Pa., 143; W., 116); a second, "whoopee" (Po., 118; Pa., 142; W., 114); a third, "a lot of noise, hollering and shouts" (Po., 125; Pa., 149; W., 121). A fourth tells us flatly:

> "It was generally understood by everybody" that the bringing in of the verdict "was the reason for the demonstration" (Po., 127; Pa., 150; W., 122).

The question here is not of "the petitioners' innocence or guilt." It is "solely the question whether their constitutional rights have been preserved" (*Moore* vs. *Dempsey,* 261 U. S., 87-8). The consideration that the results reached in trials wholly unprepared and essentially undefended were—as tested even by their own records—wrong results, is not as such material. But if "jury and judge" (261 U. S., at 91) are to proceed in the constitutional sense fairly, they must proceed calmly, deliberately,—with discrimination. And the Alabama Chief Justice finding—with his experience of years at the bar of the State, of nearly 40 years on the bench of the State—that the juries' actions revealed "no discrimination," correctly deduced that the trials were not in the constitutional sense "fair and impartial" (Po., 173, 174).

The juries did not exercise deliberation,—and the internal evidence shows it:

(1) The physicians that examined the girls were scientific men. The prosecution called them. The doctors made their examination within an hour, according to Mrs. Price's first estimate (W., 32)—within an hour and a half or two hours according to her later estimate (Po., 24)—of the "occurrence" (W., 32). The girls were not "hysterical over it at all" (Dr. Bridges, Pa., 31; Dr. Lynch, W., 38). They were not "nervous" (Pa., 31).

(2) Six persons, according to the prosecution, had intercourse with each girl. With respect to Ruby Bates the doctors found only the deposit normal to a single act of intercourse (W., 33, 34, 37-8; Pa., 31; Po., 29).* With respect to Victoria Price they found much less (W., 37-8; Pa., 31; Po., 29).

(3) "I fought back at them" (Price, W., 30). "They hit me on the head" with a gun (Price, W., 27). The doctors found no head wound, no lacerations anywhere, no evidence of bleeding (W., 36, 37, 38).

(4) "Everyone of the negroes had pocket knives" (Price, W., 27). "They had their knives and pistols on them when they stopped the train at Paint Rock" (W., 47). Both girls were able to testify even to the calibre of the pistols (W., 23; Pa., 29; Po., 24). The boys were searched of course (see *e. g.*, W., 58). Two pocket knives were introduced in evidence (W., 58-9; Pa., 43-4; Po., 42-3). No pistols.

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*Miss Bates expressly testified that she was not a virgin and that she had had sex relations outside of those she charged against the defendants (W., 43; see also Dr. Bridges at Po., 30).

(5) Mrs. Price's undergarments "were torn off," "pulled apart" (W., 29, 23). She had these garments with her after the occurrence (Po., 23; Pa., 22; W., 23). She was kept in continuous confinement for the express purpose of being a "witness in these cases" (Po., 43). The garments were not produced.*

(6) Seven white boys were in the gondola car. Self-evidently they had a story to tell:

"We had spoken a few words with the white boys," Mrs. Price herself says (W., 28), though she explains that "that wasn't in no loving conversation" (W., 28). The colored boys "shot five times over the gondola where the [white] boys were" (Po., 26). "While the defendant Montgomery was having intercourse with me and the other one held me," the colored boys told the white boys that "they would kill them, that it was their car and we were their women from then on" (Po., 23). Thurman, a white boy, was hit on the head with a gun, according to Mrs. Price (W., 28). Falling, he "looked back and seen the one sitting behind defendants' counsel grab me by the leg and jerk me back in the gondola" (W., 28). "There was one white boy on the car that seen the whole thing, and that is that Gilley boy" (Price, W., 27); he was "in the gondola all the time the ravishing was going on" (W., 33).

There was no difficulty about producing the white boys. Their names were printed as early as March 26 in the Sentinel (Po., 6; Pa., 6; W., 6). They were kept in the prosecution's "control" (Po., 115; Pa., 110; W., 112). Gilley was called in one case only, the last, and in that case in rebuttal,—his testimony comes to nothing more than that he had seen the defendants in the gondola

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*Both Mrs. Price and Miss Bates—although of course "there were no charges against us" (Po., 43)—were "held in jail since the 25th of March last month." "They keep us locked up at the jail, both of us locked up there" (Po., 43; see also W., 31).

(Po., 47-8). Thurman was not called as a witness in any case. None of the other five white boys was called as a witness in any case.*

(7) The charge was of a crime committed in an open car in broad daylight on a train that passed through Scottsboro and several other towns and villages. The prosecution was able to produce five witnesses that saw a fight on the train, including two that saw girls on the train (Po., 31, 32; Pa., 33, 34; W., 48-9, 50-1).** It produced none that said they saw a rape. In no case did the prosecution call as a witness for any purpose any trainman, flagman or signalman; any employee or official of the Scottsboro station or of any station; any person connected with the train or the road.***

(8) As to *all* defendants the juries accepted the stories of Victoria Price and Ruby Bates no matter how transparently insufficient might be the case against a given defendant. Upon the testimony of all witnesses there were several negroes on the freight train who were not apprehended or tried (*supra,* p. 7),—and an issue as to

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*No affidavit from any of the white boys was produced in opposition to the motion for new trial.

**These two witnesses—one 30 yards (W., 48), the other 100 yards (Pa., 34), from a train moving 35 or 40 miles an hour (see *e. g.,* W., 48)—gave some vague suggestion of violence being done to the girls. But neither made any allusion to any sexual act. And it is clear that they did not feel the resentment that would have been inevitable had they suspected a rape or attempted rape: "I did not pay any attention to the colored men. I just saw that one grab her and throw her down" (Robbins, Pa., 34; see also Morris, W., 48-50).

***The only person on the train or connected with its operation—except the prosecuting witnesses and the defendants—that at any time told what happened on the train was a Mr. Ricks, who was there from beginning to end. In support of the motion for new trial he made affidavit that he saw the girls get into a *box* car at Stevenson and that "they were in it when he last saw them until they got to Paint Rock" (Po., 107-8; Pa., 139; W., 105). The prosecution made no attempt to impeach Mr. Ricks or his affidavit.

every defendant was whether *he* had a part in the crime charged. The case of Roberson, one of the defendants in the Powell group, is instructive upon the point whether or not the jurors "discriminated":

Roberson's testimony was that he was not in the gondola car but lay seriously ill in a box car (Po., 36-7, 43-4); other negroes, who admitted the fight with the white boys and their own participation in it, confirmed that Roberson was not in the gondola (Po., 38, 42); a white witness, called by the prosecution, who was a member of the posse that met the train at Paint Rock, confirmed that he saw some one get off that part of the train where Roberson said he had been (Po., 45); a doctor called by the prosecution testified that he had examined Roberson and confirmed that Roberson was sick,—his condition such as to make participation in a rape "painful" (Po., 29).

Yet Victoria Price said Roberson had been "one of them that was running up and down inside of the car," etc., and had been "with the other girl" (Po., 25). The Gilley boy inclusively declared, "I saw all the negroes in that gondola" (Po., 47),—although he did not separately identify Roberson. Ruby Bates likewise said in general terms that all the five Powell defendants were in the gondola (Po., 26),—although she, too, did not separately identify Roberson and did not recall that incident of being herself raped by him to which Victoria Price had testified (Po., 26-7).

Roberson was convicted.*

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*In the Powell case the prosecution called in rebuttal four other witnesses for the purpose of identifying the several defendants. None of them added anything to the identification of Roberson:

The two that mentioned Roberson by name testified that they first saw him after he had been taken off the train and when he was in the group with the other negroes and under guard (Latham, Po., 44; Keel, Po., 47). One of the other two said, "I think that I saw that negro over there on the corner, on the end of the front row, on top of the gondola car" (Brannon, Po., 45). The fourth professed to identify the "negro on the end in front" as the man he saw "when the train was coming around the curve right below town"; "I could see them that far" (Rosseau, Po., 44-5).

(9) Over the penalties the juries had "discretion" (Code, §5407). In all cases and upon all accused the juries imposed the same penalty. "As to each of the eight defendants they went the extreme" (Anderson, C. J., Po., 173). In "leadership," in "age," there were "differences." The differences were ignored. The juries inflicted the death penalty alike upon the chief tried alone, upon his regular followers, and upon chance acquaintances first met upon the train,—upon Powell, whom no witness named as having intercourse with either girl (*infra,* p. 39). The juries meted out justice upon the same terms to "that old big boy" (Po., 24; Pa., 23) and to "the little bit of one" (W., 29).

If the trained and experienced judge is swayed by the feelings of the community, the circumstance is evidence that the jury is carried away,—evidence and cause. To us the conclusion is unescapable that the trial judge *was* swayed by the emotion of the occasion:

The judge first made an "appointment" of counsel that was invalid under the statutes of the State, and that if valid would have been insufficient to impose a specific responsibility upon any individual attorney. If ever he made an appointment even in form lawful, he did so on the last possible occasion,—on the day for which all trials were set, the day the first trial began. He acted with declared reluctance,—with an apology for the "imposition."*

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*Contrast Judge Cooley's statement:

The duty resting upon assigned counsel "is a duty which counsel so designated owes to his profession, to the court engaged in the trial, and to the cause of humanity and justice, not to withhold his assistance nor spare his best exertions, in the defense of one who has the double misfortune to be stricken by poverty and accused of crime" (1 *Con. Lims.,* 8th Ed. [1927], 700).

A statute empowered the judge of his own initiative—the military being present—to change the place of trial. The judge directed the commander to intensify the military precautions. But the judge did not of his own initiative change the place of trial. When the defense took the initiative the judge exercised his discretion against the relief.

In the first case and again in the second, with lives at stake, the judge by the opening sentence of his charge let the jury know that all he demanded was their "attention for a few moments."

In three capital cases, involving eight defendants, the judge decided motions for new trial resting upon voluminous affidavits and raising far-reaching issues under the Constitution of the United States the day the motions were submitted. Denying a new trial in every case and as to every defendant, he sustained the death penalty even when inflicted upon a boy shown by evidence uncontradicted to be under sixteen,—in defiance of "the plain mandatory terms of the statute" (Powell Opinion, Po., 168).

IV.

Errors below relied upon here; summary of argument.

"In cases taken to the supreme court" of Alabama "no assignment of errors or joinder of errors is necessary,"—only a bill of exceptions (Code, §3258, Appendix). There are no assignments of error in these records.*

The errors the Supreme Court of the State in the denial of federal rights committed, and the points we urge, are in summary form as follows:

I. There was no fair, impartial and deliberate trial and there was therefore a denial of due process. The decision of the State Court is erroneous upon the authority of *Moore* vs. *Dempsey*, 261 U. S., 86.

II. Due process of law includes the right to counsel with its accustomed incidents of consultation with counsel and opportunity for preparation for trial and for the presentation of a proper defense at trial. That right in all effective sense was denied. The decision of the State Court is erroneous upon the authority of *Cooke* vs. *United States*, 267 U. S., 517, and of the whole line of decisions upon notice and opportunity to defend running back to *Pennoyer* vs. *Neff*, 95 U. S., 714.

III. The trial of petitioners before juries from which qualified members of their own race were—because of their race—systematically excluded and their conviction by such juries, was a denial of the equal protection of the laws. Objection to the exclusion was—allowance

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*There are bills of exceptions (Po., 4-137; Pa., 3-161; W., 3-144), and these bills include the motions for new trial in which petitioners asserted their rights under the Constitution of the United States (*supra*, pp. 3-4).

being made for the circumstances—seasonably taken. The decision of the State Court is erroneous upon the authority of the line of decisions from *Neal* vs. *Delaware*, 103 U. S., 370, through *Martin* vs. *Texas*, 200 U. S., 316.

IV. The State Court misconceived the principles that underlie the claims of federal constitutional right. Its rulings affirming the propriety of the place and time of trial proceed upon grounds irrelevant to the issues here and upon reasoning demonstrably erroneous.

POINT I.

There was no fair, impartial and deliberate trial and there was therefore a denial of due process. The decision of the State Court is erroneous upon the authority of Moore vs. Dempsey (261 U. S., 86).

Moore vs. *Dempsey* (261 U. S., 86) settles the principle. A trial in circumstances of mob domination—in circumstances that preclude deliberation—is not due process of law. Conviction, confinement and death penalty after a trial so conducted constitute deprivation of liberty and life contrary to the Constitution of the United States.

The only question is whether—tested by the opinion in the *Moore* case and the facts in the *Moore* record—there was during trial mob domination. The question is whether the conditions of time and place and feeling made impossible a trial fair and deliberate. To arrive at the answer, we juxtapose the facts of the records at bar and the facts as shown by the *Moore* opinion and record,—setting forth (1) features demonstrably identical; (2) circumstances of mob domination here presented and in the *Moore* case presented in less degree or not at all; (3) the single item that in the *Moore* case was shown with more exactness of measurement than in the cases at bar,—but in these cases as certainly presented.*

(1)

(a) A "Committee of Seven and other leading officials" reminded the Governor of Arkansas a year after the event that at the time they " 'gave our citizens

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*Mr. Justice Holmes in the *Moore* case in certain instances read—as anyone dealing with a problem of the sort must read—between the literal lines of the record in order to capture the spirit of the proceedings in the trial court. It is partly for this reason, and also for the further reason that certain facts in the Moore record are not mentioned in the opinion that we make constant reference to the *record.*

their solemn promise that the law would be carried out' " (261 U. S., at 89).

In the cases at bar the day of the offense—as we learn from the newspaper of the next day—"Mayor Snodgrass and other local leaders addressed the threatening crowd and plead for peace and to let the law take its course" (Po., 8; Pa., 7; W., 7). "Calm thinking citizens" "realized that while this was the most atrocious crime charged in our county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process" (Po., 8-9; Pa., 8; W., 8).

(b) "The petitioners were brought into Court and informed that a certain lawyer was appointed their counsel" (261 U. S., at 89). "They were given no opportunity to employ an attorney of their own choice" (*Moore*, Rec., 5).

(c) Appointed counsel "had had no preliminary consultation with the accused" (261 U. S., 89).

(d) Moore and the others "were placed on trial before a white jury—blacks being systematically excluded" (261 U. S., 89).

(e) "The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous consequences to anyone interfering with the desired result" (261 U. S., at 89).

In Scottsboro on March 25 after the arrest "a great crowd gathered at the jail,"—a "threatening crowd" (Po., 8; Pa., 7; W., 7); on March 31 at the first arraignment a "great crowd was present or tried to get into the court room" (Po., 11; Pa., 10; W., 10); on April 6 the Sheriff testified that "right now" there was present a "great throng" (Po., 95; Pa., 85; W., 92),—a throng that only the military, with its machine guns and tear gas bombs, held back from "the court house." In the presence of this throng—"under orders of the court"—the Alabama commander issued "orders to his men" not to permit citizens to "come in the court house grounds with arms." The situation existed "on every appearance of the defendants." It "exists right now."*

(f) "Counsel did not venture to demand delay or a change of venue, to challenge a juryman or to ask for separate trials" (261 U. S., at 89).

Counsel in the cases at bar did venture to hand up "a single copy" of a half-page petition for a change of venue, with newspaper exhibits (Po., 4-5, 92; Pa., 4, 82; W., 4, 89). But counsel did not have opportunity to make that preparation upon which a comprehensive exposition of the sentiment of the community depended (see *infra,* p. 55).

Counsel in these cases too did not "demand delay."

We can be certain there was no challenge to any juryman. For on the motion for new trial the State successfully objected to the inquiry whether even that question, which in the circumstances of this case was the most obvious, was put to jurymen (Po., 123, 125, 126, *et seq.;* Pa., 147, 148, 150, *et seq.;* W., 119, 120, 122, *et seq.*).**

In these cases too the defense did not "ask for separate trials,"—although its right was by statute absolute and although the prosecution, whose right was merely

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*In the *Moore* case there is no suggestion in the opinion or record that the crowd around the court room, or any member of it, was armed, or that there had been any use of firearms by anyone since the quelling of the disturbances nearly a month before the trials (*infra,* p. 43).

**There is no clear reference to the absence of challenges in the *Moore* record, if indeed any reference. There is merely a statement that there was "no objection to the petit jury or any previous proceedings" (p. 7). But the conclusion, which this Court drew, that there were no challenges was unescapable in the *Moore* case,—as for the same reasons the same conclusion is unescapable in the cases at bar.

discretionary, asked for the severances it wanted and obtained those severances.*

(g) The appointed counsel "cross-examined the witnesses, made exceptions and evidently was careful to preserve a full and complete transcript of the proceedings" (261 U. S., at 96, dissenting opinion).** In the *Moore* case as in the cases at bar there was the form of trial. In both cases there was only the form. In both cases the evidence was without discrimination found sufficient as to all defendants; in both cases the death penalty was imposed upon all defendants. "Jury and judge were swept to the fatal end by an irresistible wave of public passion" (261 U. S., at 91).

We pass now from circumstances of obvious and often of verbal identity to facts and features more strongly presented in the cases at bar than in the *Moore* case, or here presented and not presented in the *Moore* case.

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*The psychological effect of the successive trials was the same in the two sets of cases:

The Arkansas prosecutor first tried Frank Hicks, who was supposed to have fired the shot that killed Clinton Lee, and immediately thereafter the other 5 defendants together (see *Moore*, Rec., 81, 106).

The Alabama prosecutor first tried Weems, "that old big boy" (Po., 24, Pa., 23) and with him Norris, who implicated Weems (*supra*, p. 14). He next tried Patterson, the leader, alone. He finally tried Andy Wright, a regular member of the Patterson group (Po., 38). With Wright—after two verdicts imposing the death penalty had been rendered—the prosecutor brought to trial 4 other defendants, whose cases in other circumstances would have had particular strength: Powell,—who, Mrs. Price said, did not rape her (Po., 25) and who was not individually identified by either Mrs. Price or Miss Bates as having raped Miss Bates (Pa., 25, 27); Roberson,—seriously sick and declared by a number of witnesses not to have been in the gondola (*supra*, p. 31); Montgomery,—weak in one eye, the other eye "out" (Pa., 46), he too declared by various witnesses not to have been in the car (Pa., 45-6, 47, 49; Po., 39-40, 42); Williams,—the "little bit of one."

**The following pages of the *Moore* record illustrate this statement: 29; 31; 32; 36; 37; 41; 43; 47; 49; 50; 54. Seven witnesses were called.

The exceptions in the cases at bar (taken, as the Court will observe, ever more infrequently as the trials progressed) are discussed at W., 153-8; Pa., 171; Po., 160.

(2)

(a) Moore and his companions were "poor and ignorant and black" (261 U. S., at 102, dissenting opinion). But they were grown men. They were moving spirits in an elaborate organization,—in the words of a witness of their own race "the head leaders" (*Moore*, Rec., 40; see also 31). The leader in the cases at bar was a boy under 21; in so far as the records show the ages, they show affirmatively that all the others were under 21.*

(b) Moore and his fellow petitioners "were citizens and residents of Phillips County, Arkansas" (*Moore*, Rec., 1). They were tried in Phillips County. The defendants in the cases at bar, on trial for their lives in Alabama, were residents either of Tennessee or of Georgia.

(c) The interval between occurrence and trials was twice as long in the *Moore* case as in the cases at bar:

The crime in the *Moore* case was on October 1, 1919 (*Moore*, Rec., 1); the trial was on November 3 (261 U. S., at 89; *Moore*, Rec., 27).

(d) There was no showing in the *Moore* case comparable to the showing here of publications "sensational and damaging" in the local press:

It was alleged in general terms in the *Moore* petition (*Moore*, Rec., 3) and accepted by this Court (261 U. S., at 88) that "inflammatory articles" appeared day by day. One of the articles the Moore record sets forth. That article appeared on October 7,—nearly a month before the trials (*Moore*, Rec., 11-14). And that article—highly colored as it was—carries no suggestion of lynch law and makes no charge and gives no intimation of the

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*For the significance that this Court has attached—upon an issue of a state court's denial of rights under the Fourteenth Amendment—to the quality and circumstances of the particular negro prisoner, compare *Neal* vs. *Delaware*, 103 U. S., 370, 396.

individual guilt of any of the negroes who were subsequently brought to trial,—let alone of all of them.*

The articles in the Jackson County Sentinel name the defendants in "a crime without parallel" and declare the evidence—which includes "confessions"—"conclusive," "almost perfect."

(e) Counsel in the *Moore* case "called no witnesses for the defence although they could have been produced, and did not put the defendants on the stand" (261 U. S., at 89).

In the cases at bar the defense did call witnesses. But they were all negroes against whom the same indictments lay and bearing the odium of the same "crime without parallel." In the first case, which foreshadowed the result in the subsequent cases, and again in the second case, these witnesses went back upon their fellow defendants (W., 55-8; Pa., 39-41).**

(f) Neither side summed up to the juries in the *Moore* case (*Moore,* Rec., 51). But consider the cases at bar. Nothing more clearly reveals the atmosphere that overhung all phases of all the trials than the following extract from the record in the first case, already partially quoted:

> "After both sides had closed their testimony, defendants' counsel stated to the court that they *did not care* to argue the case to the jury, but counsel

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*There is mention in the article of "confessions" by certain negroes. But no one of the negroes subsequently brought to trial is named as making these confessions or as being implicated by them.

**In the *Moore* case two negro witnesses testified to the guilt of the defendants; but they were witnesses called by the *prosecution* (*Moore,* Rec., 31-45).

for the State stated to the court that they did wish to argue the case to the jury, and one of counsel for the State proceeded to argue the case to the jury. At the conclusion of said argument of counsel for the State to the jury, counsel for defendants stated that they *still did not wish* to argue the case to the jury, and objected separately and severally on behalf of the defendants to any further argument of the case to the jury by counsel for the State, on the grounds that after counsel for defendants had declined to argue the case to the jury any further argument on behalf of counsel for the State to the jury would be contrary to the law and the rules of practice of this court, and would be harmful and prejudicial to the interest of the defendants. The court overruled said objection and permitted counsel for the State to further argue the case to the jury * * *" (W., 59).*

(g) Applause over the rendition of a death verdict has a double significance: as an expression, and—in relation to later cases—as a cause, of mob emotion.** There is no reference in the *Moore* opinion or record to any applause in court room or court house or court house grounds or anywhere. There was no "hollering," "shouting," "whoopee"; no amplifier; no band.

(h) The military played no part during the *Moore* trials:

The Governor of Arkansas at no time called out the National Guard. He did, on October 2, call on the commander at Camp Pike to send United States soldiers

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*For an incident hardly less striking at the conclusion of the Powell case, see Po., 48.

***Frank* vs. *Mangum*, 237 U. S., 309, attests the importance of courtroom incidents even where the feature of successive trials is not presented. Two of the justices thought that a strong showing of applause and feeling in the court room, standing substantially alone, established a denial of due process.

(*Moore*, Rec., 95), and some were at that time sent. But these soldiers promptly put an end to the disturbances (*Moore*, Rec., 2-3, 15, 89).* There is no suggestion that any soldiers, federal or state, were around at the time of the *Moore* trials. There is on the contrary affirmative indication that soldiers were not around (*Moore*, Rec., 98).

In the cases at bar the Chief Justice of the State had this to say:

> "Every step that was taken from the arrest and arraignment to the sentence was accompanied by the military. Soldiers removed the defendants to Gadsden for safe-keeping, soldiers escorted them back to Scottsboro for arraignment, soldiers escorted them back to Gadsden for safe-keeping while awaiting trial, soldiers returned them to Scottsboro for trial a few days thereafter, and soldiers guarded the court house and grounds during every step in the trial and, after trial and sentence, again removed them to Gadsden" (Po., 172).

The Alabama Chief Justice has had better opportunity than any other man to get an insight into the way the minds of Alabama jurors work. His conclusion is:

> "Whether this was essential to protect the prisoners from violence, or because the officials were over apprehensive as to the condition of the public mind, matters little as this fact alone was enough to have a coercive influence on the jury."

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*This Court's opinion notes that "*shortly after the arrest* of the petitioners a mob marched to the jail for the purpose of lynching them but were prevented by the presence of United States troops" (261 U. S., at 88). And the dissenting opinion alludes to "the disorders of *September*, 1919" (at 101).

(3)

There is but one concrete respect in which the *Moore* record went beyond these records in the demonstration that the prisoners had only the *form* of trial. The petition in the *Moore* case recited that the trial lasted less than an hour and that the jury's verdict was brought in in a few minutes (*Moore*, Rec., 5). The *Moore* case was upon demurrer and this Court accepted these allegations (261 U. S., at 87, 89).

In the cases at bar there is no such mathematically exact statement. As a practical matter there could be none:

The practice in Jackson County does not, as the records show (Po., 53; Pa., 53; W., 63), take note of the time a jury goes out or returns. The ignorant and frightened boys who were the defendants were in no position to estimate the length of the trials or of the juries' "deliberations." Mr. Roddy and Mr. Moody might indeed have done so. But they had no part in the affidavits that raised the constitutional issues.*

Plainly, if there had been extended deliberations, the prosecution would have had no difficulty in establishing such a fact. For it would have been at least as easy to procure affidavits from the prosecutors themselves, as, let us say, from sheriffs and deputy sheriffs (compare W., 137, 139, 140, 142),—not to speak of per-

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*Compare *Downer* vs. *Dunaway* (53 F. [2d], 586; December, 1931),—a decision of the Circuit Court of Appeals in the Fifth Circuit granting, on the authority of *Moore* vs. *Dempsey*, a petition for *habeas corpus* in a situation like that in the *Moore* case and in the cases at bar. Speaking of counsel assigned on the day of trial to defend a negro accused of rape, Judge Bryan says:

> "Counsel who represented appellant may have construed their appointment as covering only the actual trial, such as impaneling the jury, examining and cross-examining the witnesses, and making arguments in the case; and not as including the making of motions for continuance, change of venue, and a new trial" (p. 589).

sons without official position like the editor of the Jackson County Sentinel (Po., 134; Pa., 158; W., 135). The prosecution attempted no such showing.

The gross facts are clear:

Three capital trials with 8 defendants were completed in three days.

The Powell case involved 5 defendants. *After* 6 witnesses had testified in the Patterson case, and *after* the judge had charged the jury in that case (Pa., 42, *et seq.;* Po., 2-53),—on that same day the Powell case commenced. And the Powell jury found time—still on the same day—to bring in a verdict that all defendants were guilty and that all defendants must suffer the extreme penalty.

The only other matters that could even be suggested as pointing to a more flagrant denial of the essentials of due process in the conduct of the Moore trials than in the conduct of the trials at bar are matters of mere conclusion. There were general statements in Moore's petition to the effect that "there never was a chance for the petitioners to be acquitted;" that "no juryman could have voted for an acquittal and continued to live in Phillips County;" that "if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob" (261 U. S., 89-90).

Such conclusions cannot be compared for substance to concrete facts like the prisoners, under military guard, being carried to court at night; their parents fearing to come to Scottsboro or even to Gadsden; applause in the court room on the rendition of the death verdict.*

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*It is hardly necessary to say that this Court noted the merely conclusory quality of these declarations in the Moore petition. Observe the prefatory phrase in the opinion, "according to the allegations and affidavits" (261 U. S., at 89).

At the outset we stated—we have by minute analysis now demonstrated—the following as a summary formulation of the comparison between the cases at bar and the case upon which this Court has ruled:

In essentials the cases are identical; in many respects the showing of mob domination is clearer and stronger in the cases at bar,—some important points definitely established here were not shown in the decided case; in the only respect where the showing here is less mathematically precise, the difference is in the mechanics of proof concerning a fact whose existence is in no doubt.

The argumentation in the Alabama Supreme Court directed the Court's mind explicitly to the comparison of the *Moore* case and the cases at bar; for the briefs of all defendants cited the *Moore* opinion over and over again. And the State Court, although it approached the matter from a different angle, did turn to a comparison of the *Moore* case and the cases before it. But only by the *general* statement that difference there was did the majority below purport to reconcile its decision with the decision of this Court,—not one circumstance of distinction did it *specify* (Po., 158). The Chief Justice in his dissent reasoned in the same way as did this Court and to the same conclusion,—that the accumulation and combination of conditions and influences kept the trial from being fair and the process from being due (Po., 174).

The grounds on which the majority proceeded below are the same grounds on which the Arkansas Court unanimously sustained the conviction of Moore:

The Alabama Court affirmed the convictions essentially because it found no exceptions well taken (compare W., 154-5; Pa., 177; Po., 163). "The trials were had according to the law," said the Arkansas Court (*Moore*, Rec., 66). The point is irrelevant in the cases at bar as it was found to be in the *Moore* case. Whether or not the local law as expounded by the local court justified the withholding, for example, of a change of venue, it remains true that conviction in the circumstances of the place and time constituted a deprivation of life and liberty in defiance of the Fourteenth Amendment. But neither Court grasped the due process requirement of the Constitution of the United States.

The Alabama Court certified that Mr. Moody was "an able member of the local bar" (Po., 170). The Arkansas Court remarked that "eminent counsel was appointed to defend appellants" (*Moore,* Rec., 66). Neither Court addressed itself to the question whether a designation coming on the day a series of capital trials commenced could be in the constitutional sense valid.

The Alabama Court concluded that, "having made no objection to the personnel of the jury on account of race or color, the defendants are in no position to put the court in error, in the contention made for the first time on motion for new trial" (Po., 162). The Arkansas Court decided the same issue the same way,—"the question was raised in the motion for a new trial, and it, therefore, comes too late to be now considered" (*Moore,* Rec., 65; and see 261 U. S., at 91). Neither court inquired whether the rule was applicable in circumstances that made earlier protest impracticable or impossible.

* * *

This Court in the *Moore* case granted relief by the remedy, collateral and extraordinary, of *habeas corpus,*—a remedy whose basis is a challenge to the jurisdiction (compare 261 U. S., at 91). It cannot, we submit, sustain the judgments at bar against direct attack.

POINT II.

Due process of law includes the right to counsel and its accustomed incidents of consultation with counsel and opportunity for preparation for trial and for the presentation of a proper defense at trial. This right was in all effective sense denied. The decision of the State Court is erroneous upon the authority of Cooke vs. United States, 267 U. S., 517, and of the whole line of decisions upon notice and opportunity to defend running back to Pennoyer vs. Neff, 95 U. S., 714.

"With us it is a universal principle of constitutional law, that the prisoner shall be allowed a defense by counsel" (1 *Cooley, Con. Lims.* [8th ed., 1927], p. 700, collecting authorities).

The principle is a due process principle. "Due process of law," declared Taft, C. J., "includes the assistance of counsel, if requested, and the right to call witnesses to give testimony" (*Cooke* vs. *United States,* 267 U. S., 517, 537). The underlying doctrine goes back to *Pennoyer* vs. *Neff* (95 U. S., 714).

The right to counsel is given with "all its accustomed incidents,"—this "the Constitution secures" (1 *Cooley, Con. Lims.* [8th ed., 1927], p. 700):

"The right to the aid of counsel includes the right to communication and consultation with him" (*Cooley,* footnote 5, collecting numerous cases). "The constitutional guaranty that one shall have the right to be represented by counsel means nothing if it does not mean that he shall have reasonable time in which to state the facts of his case to counsel after they are employed or appointed, and to be advised" (*Jackson* vs. *Commonwealth*, 215 Ky., 800, 802). "Benefit of counsel either means something or it means nothing. To promise the benefit of counsel and then render the service ineffective is, as Judge Blandford once remarked, 'to keep the word of promise to the ear and break it to our hope'" (Russell, C. J., in *Sheppard* vs. *State*, 165 Ga., 460, 464 [1928]).

The right is broadest in a capital case. "The intense strain involved in the responsibility of defending one whose life is at stake is such as can scarcely be described in words; and altogether aside from inquiry into the facts of the case and legitimate inquiry so far as possible into the character of the jurors, as much time and thought are required to consider and determine what course of action shall be pursued in defending one whose life is at stake as in important civil cases where many thousands of dollars are involved" (*Sheppard* vs. *State*, *ibid.*).*

The right to counsel is "universal" and "constitutional." The right is included in due process. It is given with "all its accustomed incidents." It has its furthest scope where "life is at stake."*

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*Sheppard was forced to trial in a capital case a week after the crime and the day counsel was appointed. His conviction was reversed.

Report No. 11 of the National Commission on Law Observance and Enforcement, *Lawlessness in Law Enforcement* (Government Printing Office, Washington, 1931) quotes with approval the passages we have quoted from Mr. Justice Russell's opinion.

It remains to apply these rules to the records.

The extent of defendants' *own* capacity for the preparation and presentation of their cases can be measured by obvious facts. "The defendants had no opportunity to prepare their defense, as they were kept in close custody from their arrest until the trial" (*Mitchell* vs. *Commonwealth,* 225 Ky., 83, 84 [1928]).** They were "ignorant,"—all but one "illiterate" (*People* vs. *Nitti,* 312 Ill., 73, 89, followed in *Sanchez* vs. *State,* 199 Ind., 235, 246).***

Defendants' families and friends were in no different case. With their sons about to be put on trial for their lives or actually on trial for their lives, the parents were afraid to go to Scottsboro,—afraid even to go to Gadsden. "Parents, kinsfolks" had no communication with their boys.

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*Clearly settled though these principles are, the Court below seems to have overlooked them altogether. It nowhere treats the right to counsel as constitutional.

A recent state court decision directly contrary to the decisions below is *Commonwealth* vs. *O'Keefe,* 298 Pa., 169. The day counsel was procured the accused was tried. He was convicted and a sentence of 9 months' imprisonment and $1,000 fine imposed. The Court declared "the real question" to be whether this treatment "deprived the defendant of his constitutional rights." Citing *Cooke* vs. *U. S.* and numerous other decisions here it held the proceeding a violation of the Fourteenth Amendment.

**The Kentucky Court, in circumstances much like those in the cases at bar—the National Guard had been called out, etc.—reversed the conviction of a negro charged with killing a white man and tried a week after the alleged offense and a few days after "he had *employed* an attorney."

***There was no question of mob domination in the *Nitti* and *Sanchez* cases. The defendants in those cases were foreigners; the convictions were reversed because representation by counsel was inadequate. For judicial recognition that at least as much allowance is to be made for negroes in a case where "race prejudice has been aroused and public excitement prevails" compare *Mitchell* vs. *Commonwealth,* 225 Ky., at 85, *supra.*

If then anything was to be done for the boys only counsel could do it. Never was there a case in which the need for counsel was greater. Never was there a case that called for standards more liberal in measuring the right to counsel and the scope of its necessary incidents.

The "appointment" of March 31 was void. The law allows the designation of not more than two. All the lawyers were to "defend" all the boys. "The court did not name or designate particular counsel, but appointed the entire Scottsboro bar, thus extending and enlarging the responsibility and, in a sense, enabling each one to rely upon others" (Anderson, C. J., Po., 172). Such a designation would not be, within the meaning of the due process clause of the Constitution of the United States, valid even if it were permitted—as in fact it was prohibited—by local statute. Everybody's business, it is proverbial wisdom, is nobody's business.

The only question then that merits even discussion is whether on April 6 there was an appointment constitutionally valid. Of the designation that day attempted all the following things are true:

(a) Defendants' utter helplessness continued right down to April 6. On that day "they did not know who would be their counsel and they had been in jail ever since they were arrested, March 25, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinsfolks or friends and had no chance to procure witnesses" (Po., 80; Pa., 111-2; W., 78; see also Po., 83; Pa., 114; W., 80).

(b) The boys were not asked whether they had counsel or what counsel they wanted. They were at most, "informed that a certain lawyer was appointed their counsel" (261 U. S., at 89).

Nor would a suggestion to the boys that they or their families employ counsel—reasonable time being given—have been an empty formality. The conclusive fact, which Anderson, C. J., points out (Po., 172-3), is that the boys' connections subsequently procured counsel of their choice.*

(c) There was not so much as the form of a true *appointment*. The judge exercised no discretion in the selection of counsel. He said merely that "*all* the lawyers that will" assist Mr. Roddy might do so (Po., 91; Pa., 81; W., 88). When one lawyer declared his readiness to "help Mr. Roddy in anything I can do about it, under the circumstances," the Court at once accepted that lawyer (Po., 91; Pa., 81; W., 88).**

(d) The zeal of counsel thus not appointed—merely accepted—was not kindled. It was dampened. The Court in terms and twice over characterized what should have been a call to duty as an "imposition."

(e) The chief counsel — the local lawyer merely "helped"—was "not familiar with the procedure in Alabama;" had not had "an opportunity to prepare the case" and "had not prepared this case for trial" (Po., 89; Pa., 80; W., 87); was "here just through the courtesy of your Honor" (Po., 90; Pa., 80; W., 87). He urged "your Honor to go ahead and appoint counsel;" told the Court, "I think the boys would be better off if I step entirely out of the case" (Po., 90; Pa., 80; W., 87); and, at the end of the long colloquy, modified his position only thus far:

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*As a matter of fact General Chamlee had acted for the Patterson family in another connection and before the prosecution of their son (Po., 75; Pa., 98; W., 73).

**Mr. Moody, the lawyer whose offer was taken, had apparently not even seen the boys before April 6:

Evidently referring to the proceedings of March 31—for it is uncontradicted that no lawyer saw the boys either in the Scottsboro jail or in Gadsden prison (*supra*, p. 18)—Mr. Moody says:

> "*Most* of the bar have been down and conferred with these defendants in this case; *they* did not know what else to do" (Po., 58; Pa., 79; W., 86).

The italicized words indicate that Mr. Moody had *not* been one of the lawyers that saw the boys at the time of the indictment on March 31 and the abortive arraignment on that day.

> "If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent" (Po., 90; Pa., 81; W., 88).*

(f) Overwhelmingly important, the "appointment" was made the day that—in circumstances of prejudice, passion and extraordinary difficulty—the trial of three capital cases involving eight defendants was commenced.

The authorities settling it that the right to counsel is constitutional and that it is included in the due process concept, impose no requirement that the defendant show that his case, properly prepared and presented, would have been different in character or result. No defendant who has *not* prepared a case—who has *not* had time for consultation, investigation and the procuring of witnesses—can tell what case he *might* have made. No one—to pass from the general problem to the particular situation—can tell what the juries would have done had counsel had time and opportunity to find the facts and put the facts before them.

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*Addressing itself directly to Chief Justice Anderson's dissent, the majority of the Court "think it a bit inaccurate to say Mr. Roddy appeared only as *amicus curiae*" (Po., 170). But the fact is uncontradicted that the only lawyer any of the defendants at any time *employed* was General Chamlee (Po., 75-6; Pa., 98; W., 73). Nor did the court in Alabama purport to *appoint* a lawyer from Tennessee.

Although there thus is and can be no requirement that one complaining of the denial of the constitutional right to counsel concretely show the effects of the deprivation, certain indications are in these records so patent that we list them. By the records we shall show the effect of the absence of preparation (1) upon the proceedings and investigations that precede trial, (2) upon the trials. We shall see how right was the statement of the Alabama Chief Justice:

> "The record indicates that the appearance was rather *pro forma* than zealous and active" (Po., 173).

(1)

An objection to the constitution of a grand jury "based on allegations of facts not appearing in the record" "if controverted by the attorney for the State, must be supported by evidence on the part of the defendant" (*Carter* vs. *Texas,* 177 U. S., 442, 447).* Attorneys who only a few moments before pleading to the indictment declare themselves ready to "help," to "do anything I can about it, under the circumstances," cannot get such evidence.

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*The Alabama practice is particularly strict against objections to an indictment. Any objection to the formation of the grand jury must be taken "in all cases before a plea to the merits" (Code, §5203, Appendix; see also §5202 purporting to wipe out all objections to the constitution of a special grand jury). While such restrictions of local practice are not binding upon the *federal* courts upon issues of due process and equal protection (*infra,* p. 62), it remains true that in order to maintain those rights that the *state* law gives their clients, counsel have to act with utmost promptness.

A defendant who moves for change of venue must "set forth specifically the reasons why he cannot have a fair and impartial trial in the county" (Code, §5579; see Appendix). "The burden of proof was upon the defendants to show that they could not get a fair and impartial trial in Jackson County, before the court would have been justified in granting the change of venue moved for" (Powell Opinion, Po., 157).

A "burden" so heavy it takes time to discharge. The Kentucky Court in a late opinion dealing precisely with mob domination, shows why—for the right to a change of venue to be effective—there must be *time* to prepare the motion. " 'It may happen that the strong feeling against the defendant in a county which prevents his having a fair trial may prevent him from obtaining witnesses to so testify on his motion for a change of venue' " (*Estes* vs. *Commonwealth*, 229 Ky., 617, 620).

The Alabama practice, too, permits witnesses to be called on a motion for change of venue. But the only persons that Mr. Roddy and Mr. Moody called as witnesses, or doubtless in the circumstances could call, were two men—the Sheriff and the Major of the Guard—who happened to be present in the court room. The lawyers could not "*obtain* witnesses."

The upshot is:

The Alabama Supreme Court found no error in the refusal of the defendants' motion for change of venue because they did not "meet and discharge" the burden of proof (Po., 158). Defendants had no time in which to do the things essential to discharge their burden.*

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*The following passage in the Patterson opinion well illustrates how the time factor stood in the way of defendants' motion for change of venue:

> "As to the publications appearing in The Montgomery Advertiser and the Chattanooga paper, there was no evidence showing

(*Footnote continued on next page.*)

Counsel in advance of a trial have not only to make motions. They have to find out the facts and discover the witnesses to the facts,—in the cases at bar, for lawyers whose connection began on the day of trial, a task impossible of accomplishment.

The charge was of a crime in a moving train that covered 50 miles while the assaults were supposed to be taking place, and that passed through a number of towns and villages. Counsel accepted on the morning of trial could not make an investigation along this route and in these places.

The defendants were all non-residents. Counsel present, from the moment trial began, in an Alabama court room, could not hunt up character witnesses in Georgia and Tennessee.

The character and reputation of the complaining witnesses were not, so the Alabama Court held, in these cases at issue, either directly or upon cross examination.* But the girls' movements on the night before the occurrence had—in view of the medical testimony (Po., 29; Pa., 30-1; W., 33-8)—a specific relevancy. These girls that in overalls (Po., 24) came on a freight train from Chattanooga—which was not the home of either (Po., 22, 26)—

(Footnote continued from preceding page.)

> to what extent, if any, said papers were circulated in the county from which the jurors were to be drawn, and in the absence of such proof these publications were entitled to little or no weight" (Pa., 168).

Counsel—given a little time—would of course have been able to show that daily papers published in the capital of the State or in an important city near the state line circulated in the County (compare Po., 119, Pa., 142, W., 114).

*See *supra*, pp. 16-17.

gave hazy reports of their doings in that city on the night of March 24-25. They named the street on which they stayed, but could not describe the street. They could not remember the number of the house (W., 26, 43; Pa., 25, 29; Po., 27). The defense—had there been an effective right to counsel—would certainly have attempted to find out about the girls' comings and goings, and would likely have succeeded.* Counsel could not, while trial was in progress, attempt any such thing.

The result was that the only witnesses any of the defendants had were witnesses drawn from their own ranks. All the witnesses were negroes.** All were under indictment for "a crime without parallel."

The defense—even though it thus drew from its own ranks only—did not know what witnesses to call or what the witnesses it called would say. Take as a flagrant instance the witness Roy Wright. This boy was not a defendant in the case in which he was called or indeed in any of the three cases below. There was no tactical reason for putting him on the stand. There was on the contrary grave danger in using him,—a danger that the most elementary preparation would have uncovered. It was shown by an article in the Sentinel, filed by the defense itself on the morning of April 6 as an exhibit on the venue motion, that "one of the *younger* negroes" had been "taken out by himself" and had said that " 'the others did it' " (Po., 7; Pa., 6; W., 6). Roy was only 14,—the youngest of all the boys. Yet the *defense* called Roy,—and the testimony he gave was that there had been raping by the older negro boys (Pa., 38, 39, 41).

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*Witness the vast amount of detail General Chamlee was later able to develop concerning the girls' past lives (Pa., 63-77, 133-137; Po., 102-105; W., 99-103).

**As an indication of community attitude toward the testimony of colored persons see the reference in an affidavit by the editor of the Jackson County Sentinel to "some affidavits which had been made by some negroes" (Po., 135; Pa., 158; W., 135); that this Court may take judicial notice of the likelihood of prejudice against negro testimony compare *Aldridge* vs. *United States*, 283 U. S., 308.

Of the right to counsel the incident most "necessary" is consultation. It is the incident from which the right takes its name. In a capital trial the lawyer for the defense calls a witness who may be expected to contradict the case for the defense and does contradict the case for the defense,—this can be only when between client and counsel there was no consultation, when the lawyer "had no preliminary consultation with the accused" (261 U. S., at 89).

(2)

The demonstration already given is conclusive, not only that the right to counsel was denied, but that the denial deprived the accused of all real defense. When appointment is made so late as to make impossible "inquiry into the facts of the case"—so late as to preclude preparation—, then indeed "the benefit of counsel" is "promised," but "the service rendered ineffective." It is worth while bringing together, however, the indications supplied by the records that the cases thus not prepared were for practical purposes not even *presented:*

The motion for change of the place of trial was perfunctory,—there was no argument in support; a motion for change of the time of trial was the most important and—to lawyers charged on the very day of trial with responsibility for the cases the most obvious—of all motions,—but it was not made; there was no demand for severances,—although the issue of identification was cardinal and the right of the defense to separate trials absolute; there was no opposition to the severances the prosecution requested; there could be no "legitimate inquiry into the character of the jurors" (*Sheppard* vs. *State, supra*), and there were no challenges; there was no opening address for any defendant; there are a handful of exceptions to rulings on evidence in the first case, 4 in the second case, in the third with 5 defendants 2; in no case did counsel for the defense sum up for any client,—nor did they demand in return for the waiver of a right so fundamental a corresponding waiver by the prosecution; in no case did the defense submit a single instruction to the jury; in none did it take a single exception to the charge.

* * *

We saw in our first point that there was in the constitutional sense no trial. We have seen in this point that there was in the constitutional sense no representation by counsel. Boys tried upon charges that threatened their lives did not have "reasonable opportunity to meet them" (*Cooke* vs. *United States*). Their defense had only the semblance of presentation. It had no preparation.

POINT III.

The trial of petitioners before juries from which qualified members of their own race were—because of their race—systematically excluded and their conviction by such juries, was a denial of the equal protection of the laws. Objection to the exclusion was—allowance being made for the circumstances—seasonably taken. The decision of the State Court is erroneous upon the authority of the line of decisions from Neal vs. Delaware, 103 U. S., 370, through Martin vs. Texas, 200 U. S., 316.

(1) "An accused is entitled to demand, under the Constitution of the United States," that "in the empaneling of the petit jury, there shall be no exclusion of his race, and no discrimination against them, because of their race or color" (*Martin* vs. *Texas,* 200 U. S., 316, 321).

To the same effect

Virginia vs. *Rives,* 100 U. S., 313, 321;
Rogers vs. *Alabama,* 192 U. S., 226, 231;
In re Wood, 140 U. S., 278, 285.

(2) The Fourteenth Amendment is a prohibition upon the *state.* It matters not, therefore, how the state works the exclusion,—"whether through its legislature, through its courts, or through its executive or administrative officers." If "all persons of the African race are excluded solely because of their race or color," then a defendant of that race may say "the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States" (*Carter* vs. *Texas,* 177 U. S., 442, 447, collecting earlier authorities).

In accord

Rogers vs. *Alabama, supra;*
Neal vs. *Delaware,* 103 U. S., 370.
Martin vs. *Texas, supra;*

(3) Where the fact is established that the colored population is considerable and that colored men are never included in juries, there is "presented a *prima facie* case of denial, by the officers charged with the selection of grand and petit jurors, of that equality of protection which has been secured by the Constitution and laws of the United States" (*Neal* vs. *Delaware,* 103 U. S., 370, 397).

(4) The fact of systematic exclusion is shown in the cases at bar in the same way as it was shown in the *Neal* case: "By reason of a custom of long standing there was not one negro selected for the entire trial, throughout the whole county with a population of 30,000 people when a large number of negro landowners were qualified jurors, or for jury service" (Po., 84; Pa., 115; W., 82). The fact of exclusion is indeed tacitly admitted by the Supreme Court of the State (Po., 162-3).

(5) What the Alabama Court contends is (a) that the *statute* is unobjectionable: "The jury laws of Alabama do not exclude any man from jury service by reason of race or color" (Po., 162); (b) that "by failing to object to the personnel of the jury the defendant must be held to have waived all objections thereto" (Po., 162).

Neither point has merit:

(a) The precise proposition that it is immaterial whether the exclusion be by legislative enactment or by systematic official action was, as we have just noted, decided over and over again in the line of cases from *Neal* vs. *Delaware* through *Carter* vs. *Texas* and *Rogers* vs. *Alabama* to *Martin* vs. *Texas.**

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*The unanimous Maryland Court very recently decided the point in a noteworthy opinion, by Bond, C. J., which reviews all the authorities in this Court. It reversed the conviction of a negro because the officer charged with drawing up the jury list never included negroes (*Lee* vs. *State* [July, 1932], 161 Atl., 284, not yet reported officially). The decision is directly contrary to the decisions below.

(b) "The law of the United States cannot be evaded by the forms of local practice" (*American Railway Express Co.* vs. *Levee,* 263 U. S., 19, 21, citing *Rogers* vs. *Alabama,* 192 U. S., at 230). "The question whether a right or privilege, claimed under the Constitution or laws of the United States," was "brought to the notice of a state court, is itself a Federal question" (*Carter* vs. *Texas,* 177 U. S., at 447). In the precise case of the composition of juries the principle has over and over again been applied that the federal right to equal protection is not to be defeated by any principle of state practice clogging the mechanics of its assertion.

> *In re Wood, supra;*
> *Rogers* vs. *Alabama, supra;*
> *Carter* vs. *Texas, supra.*

In the cases at bar the defendants could not in any practical and human sense "have objected to the personnel of the jury." They were without counsel and without opportunity to prepare. By failing to assert their right to equal protection at a time they could not assert it, they did not lose the right. Due process of law and equal protection of the laws "overlap" (*Truax* vs. *Corrigan,* 257 U. S., 312, 332). It cannot be that where a mob dominates and all effective right to counsel is denied—that where, and essentially because, due process is withheld—the claim to equal protection is foregone.

In *Moore* vs. *Dempsey,* too, no statute worked exclusion. In that case, too, there was no objection to the composition of the juries. This Court did not close its eyes to the fact that the jury was "white",—"blacks being systematically excluded."

POINT IV.

The State Court misconceived the principles that underlie the claims of federal constitutional right. Its rulings affirming the propriety of the place and time of trial proceed upon grounds irrelevant to the issues here and upon reasoning demonstrably erroneous.

Proof that reasoning is mistaken reenforces the demonstration that results are unsound. In conclusion we analyze therefore the chief opinion and show:

I. The State Court does not arrive at the essentials of any of the three issues of federal constitutional right,—its treatment is in the literal sense negligible.

II. The long discussion of the place of trial is both irrelevant to the issues as here defined, and illogical.

III. The cursory reference to the time of trial is charged with errors that this Court has exposed.

I.

The State Court's misconceptions of federal constitutional rights.

"The record before us fails to show that any right guaranteed to the defendants under the Constitution of the United States was denied to the defendants in this case: on the contrary, the record shows that every such right of the defendants was duly observed, and accorded them" (Powell Opinion, Po., 163-164). The foregoing is the declaration of a conclusion merely. There is nowhere a statement of reasons. But it is not difficult to arrive at the State Court's basic conceptions or to expose its errors.

As to the right to orderly and deliberate trial: The Court considers the influences and incidents singly. It considers indeed only such matters as a motion made or an objection taken in conformity with local practice brings to its attention. The upshot is that it reduces the whole inclusive problem of fairness essentially to an issue concerning the motion to change the place of trial.

The error is in forgetting that a trial is a whole thing,—that the place, the time, the feeling, the demonstrations, the military force, the absence of prepared counsel, the composition of the jury in their effects converged.

As to the rights of counsel: The Court in truth gives no consideration. The only reference is in what really is a supplement addressed in terms to the dissenting opinion (Po., 169). The discussion does not rise above details and personalities: The Chief Justice's characterization of the Tennessee lawyer as an *amicus curiae* is called "a bit inaccurate;" the professional distinction of the Alabama lawyer is asserted (Po., 170).

The error is in ignoring that where in a capital case counsel are appointed or accepted the day trial begins, there can be no preparation,—of necessity there is denial of a right "universal" and "*constitutional.*"

As to equal protection: The Court confines its discussion to the words of the statute. It applies a rule of practice whose effect, in the circumstances of these cases, is to shut out the consideration that by systematic official action the statute was set at naught.

The error is in considering practice and form to the exclusion of fact.

As to no one of the three problems of federal constitutional right does the State Court so much as come to the issue.

II.

The reasoning as to place of trial.

The State Court—which on points of local practice eliminated other aspects of the issue of fairness of trial*—discusses at length the place of trial. But the discussion is (1) irrelevant to the issues as they are here defined and (2) illogical.

(1) *Irrelevant* the discussion is to the issues here because the State Court never envisages the question as one of constitutional right. It never asks,—Did the convictions in Scottsboro, in view of the circumstances of the time, the demonstrations, the presence of the military, etc., accord with due process? It asks only,—Was there as matter of local law error in denying the motion for change of venue?

The Court's reference to *Moore* vs. *Dempsey* makes strikingly clear the angle of its approach. The reference comes (Po., 158) in the discussion of "change of venue" (Po., 150-159). Upon issues under the Constitution of the United States the decision of this Court is not cited.

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*It disposes of the issue as to the time of trial essentially by saying that no motion for continuance was made (*infra*, p. 69); it rules that demonstrations at the rendition of verdict cannot be shown by evidence *aliunde* (*supra*, p. 24).

(2) *Illogical* the discussion is, as witness the following:

(a) "The petition does not charge that any actual violence, or threatened violence, was offered the prisoners" (Po., 151). Whether or not petitioners—under military guard and locked in prison—heard threats, the uncontradicted fact is that the crowds were, and ever since March 25 had been, "threatening."

(b) "'It is my *idea,* as sheriff of this county, that the sentiment is not any higher here than in any adjoining county' "; " 'I *think* the defendants could have as fair trial here as they could in any county adjoining.' " The Court quotes and invokes such statements as these by Sheriff Wann, and like statements by Major Starnes of what he *" 'thought' "* and of his *" 'judgment' "* (Po., 155-6). A trenchant decision has exposed the fallacy—where the issue is of community sentiment—of relying upon "the mere opinion statements of witnesses": Witnesses "themselves might be influenced the one way or the other because of the prevailing sentiment." "The proven and undisputed circumstances," the Kentucky Court concludes, "speak louder and more convincingly" (*Estes* vs. *Commonwealth,* 229 Ky., 617, 619-620 [1929]).*

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*The Alabama Court in an earlier case made the same ruling as to the relative weight to be given to circumstances and opinions that the Kentucky Court made (*Seams* vs. *State,* 84 Ala., 410). A negro was indicted for the murder of a well-known white man. The trial was held while the prisoner was under military guard, and there were other circumstances of extreme pressure. He was convicted. The Court reversed for the denial of change of venue and said, with italics:

(*Footnote continued on next page.*)

The point applies—especially in view of the Court's insistence upon the presence or absence of violence as the test—with peculiar force to the two witnesses in question. The last persons to whom intimation of threatened violence would be given would be the two officials charged generally with maintaining order and specifically with protecting the prisoners.*

(c) "The judge of the court did not direct the plaintiff to call for the militia, nor did the judge of the court make any request upon the Governor for the militia",—the point "should be stated" (Po., 154). On the day of the occurrence the Governor, at the request of the Sheriff, called out the militia,—before the judge called the session of the court or even came to Scottsboro (see Po., 8; Pa., 7; W., 7-8), before it was possible for the judge to "make any request upon the Governor." What the *judge* did was this: With the militia there, and ready with rifles, machine guns and tear gas bombs, the judge gave "orders" making even more stringent the precautions the Sheriff and the military commander had adopted,—orders to the military to search citizens for arms.

(*Footnote continued from preceding page.*)

> "In arriving at a conclusion on this subject the court is to be governed more by the *facts* of the case, as proved or admitted, and legitimate inferences from them, than by the mere *opinions* of witnesses, which are unsupported by facts" (84 Ala., at 413).

For a terse statement of the same principle in a neighboring jurisdiction, see *Brown* vs. *State*, 83 Miss., 645, 646.

*One of the witnesses was for an additional reason obviously without authority to speak about sentiment in Jackson County. Major Starnes came into Jackson County from Guntersville in Marshall County. He stayed with his picked men at Gadsden in Etowah County. He himself in an extract that the Court quotes (Po., 156), speaks of his trips "over to Scottsboro in Jackson County."

It may be noted that the defense did not ask for opinion evidence from Sheriff Wann or Major Starnes; it interrogated these officers concerning concrete facts,—the forces under their command, etc. (Po., 93-4, 95-7; Pa., 83-4, 85-8; W., 90-1, 92-5). It was the prosecution that on what purported to be cross-examination (Po., 94-5, 98; Pa., 84-5, 88-9; W., 91-2, 95) elicited the statements that the Court made its own.

"Mere mistakes of law," as the *Moore* opinion remarks, are not here to be corrected (261 U. S., at 91). But the same opinion notes fallacy in the State Court's reasoning upon points of the sort.* It is relevant, therefore, to remind this Court that the State Court's decision upon the venue motion is contrary to precedents established in other jurisdictions, and to note that the decision is inconsistent too with earlier precedent in the same jurisdiction:

The gist of the decision is that in the Court's view threats were not shown. In other jurisdictions motions for change of venue are granted all the time—on the simple ground that against the defendant there runs a pervasive community feeling—in communities and on occasions in which there is no threat or thought of violence.

A generation ago the Alabama Supreme Court reversed—upon the sole ground that it was error to deny a change of venue—the conviction of a negro indicted for an atrocious rape upon a white girl. It said:

> "The crime charged was of a character to produce the greatest public indignation. The trial was had within a short time after the alleged commission of the offense came to the knowledge of the public—as soon as a special term of the court, called in obedience to a public demand for a speedy punishment, could be convened and held. And the affidavits and other evidence show that the public were so greatly aroused against the defendant that it required the promptest and most vigorous action of the executive officers of the State, from the Governor down, and including the

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*The Arkansas Court's "answer to the objection that no fair trial could be had in the circumstances" is,—"it could not say 'that this must necessarily have been the case'" (261 U. S., at 91). The phrase Justice Holmes puts in quotation marks betrays the underlying fallacy of the State Court's opinion in the *Moore* case.

military, to protect the defendant from mob violence and summary execution; and further, that this state of feeling continued down to and through the trial, and must have had such effect upon the jury as that their verdict was little else than the registration of the common belief of the people that the defendant was guilty, and a mode of carrying out the public purpose to take his life. The trial was not and could not, under the circumstances then existing, have been fair and impartial. The court erred in denying the change of venue moved for by defendant, and for that error its judgment must be reversed" (*Thompson* vs. *State,* 117 Ala., 67, 68).*

III.

The reference to the time of trial.

The defendants were not ready on April 6. The issue of time is therefore even more important than the issue of place. The Chief Justice points this out (Po., 171-2). But the majority say very little about the issue of time.

(a) The essential reliance is upon the circumstance that no motion for continuance was made (Po., 161). Moore's counsel too made no such motion. This Court's deduction was not that the client had thereby lost his right to due process of law. Its deduction—drawn in large part from the very circumstance that motions ob-

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*The majority opinion discusses the *Thompson* case. The opinion declares generally that distinction exists, but states no circumstance of distinction (Po., 157). In the same connection it discusses, and in the same way it dismisses, both *Moore* vs. *Dempsey* and the very recent decision of the Fifth Circuit in *Downer* vs. *Dunaway* (Po., 158; see *supra,* p. 46).

viously needful were not made—was on the contrary that the trial had been unfair and that constitutional rights had been denied.*

(b) The nearest the Court comes to a consideration of the *merits* of the time issue is in the reference to the Czolgosz case (Po., 164). There is not analogy between the Czolgosz case and the cases at bar; there is antithesis. Czolgosz's crime was "committed in the presence of thousands of citizens;" the issue in the cases at bar was whether "the evidence is to be believed" (Po., 164).**

The State Court's attitude toward premature trial is the opposite of the attitude this Court has expressed. The sole fact of hasty trial may, in an "extreme case," constitute "a denial of due process of law" (*Franklin* vs. *South Carolina,* 218 U. S., 161, 168).***

**Downer* vs. *Dunaway* is in accord. The Circuit Court of Appeals in the Fifth Circuit released on *habeas corpus* a negro tried for rape the day counsel was assigned. Judge Bryan cited the circumstance that "no motion was made for a continuance" as evidence that there was no real trial and no real representation by counsel (53 F. [2d], at 588-9).

Lack of zeal in assigned counsel, Judge Bryan said, "cannot be attributed to appellant who had no choice in the selection of his counsel." To like effect is the declaration by this Court in *Neal* vs. *Delaware* (103 U. S., at 396): "Indulgence"—where the issue is of constitutional right—must be shown to a negro "who was too poor to employ counsel of his own selection."

**An interesting bit of judicial history shows how anomalous were Czolgosz's crime and prosecution. Since the present Constitution of New York was adopted "there has been but one capital case in New York which was not appealed to the Court of Appeals,—that of Czolgosz" (Committee on Amendment of the Law of the Association of the Bar of the City of New York, Bulletin 1 of 1924, pp. 5-6).

***For the analysis of numerous state court decisions upon hasty trial, see Report No. 11 of the National Commission on Law Observance and Enforcement, *Lawlessness in Law Enforcement* (Government Printing Office, Washington, 1931), pp. 273-8.

* * *

Neither upon the point of place nor upon the point of time nor upon any aspect of the issues will this Court be bound by the construction the State Court put upon the facts. The cases come to this Court upon minimum facts which are in no dispute. The rights to orderly trial, to counsel, to protection against discrimination by reason of race, are guaranteed by the federal Constitution. The issues are of federal law. Upon such issues this Court—"examining the entire record" and applying to the facts as they there appear its tests of federal right—will make its own decision.*

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*See, *e. g.*,

Kansas City Southern Ry. vs. *Albers Com. Co.*, 223 U. S., 573, 591;

Norfolk & Western Ry. vs. *West Virginia*, 236 U. S., 605, 610.

CONCLUSION.

The issue is of due process in the germinal sense,—of the Constitution's command that the law's own *process* be due. The issue is of the law's equal protection to the race for whose protection the Fourteenth Amendment was written into the organic law. The issue is of just that persecution and discrimination in matters of liberty and life that the Amendment forbids. The Chief Justice of the State found that "these defendants did not get that fair and impartial trial that is required by the Constitution" of the State. No less exacting are the standards set, and the requirements of due process and equal protection imposed, by the Constitution of the United States.

The judgments of the Alabama Supreme Court should be reversed.

Dated, September 16, 1932.

Respectfully submitted,

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APPENDIX.

ALABAMA CODE OF 1928.

"§3258. *Assignment or joinder of error unnecessary; duty of court.*—In cases taken to the supreme court or court of appeals under the provisions of this chapter, no assignment of errors or joinder in errors is necessary; but the court must consider all questions apparent on the record or reserved by bill of exceptions, and must render such judgment as the law demands. But the judgment of conviction must not be reversed because of error in the record, when the court is satisfied that no injury resulted therefrom to the defendant."

* * *

"§5202. *Objections to indictment for defect in grand jury; when not available; exceptions.*—No objection can be taken to an indictment, by plea in abatement or otherwise, on the ground that any member of the grand jury was not legally qualified, or that the grand jurors were not legally drawn or summoned, or on any other ground going to the formation of the grand jury, except that the jurors were not drawn in the presence of the officers designated by law; and neither this objection nor any other can be taken to the formation of a special grand jury summoned by the direction of the court."

* * *

"§5203. *When such plea filed; is sustained, new indictment preferred; limitation of prosecution.*—A plea to an indictment, on the ground that the grand jurors by whom it was found were not drawn in the presence of the officers designated by law, must if accused has been arrested be filed at the session at which the indictment is found, and if accused has not been arrested, it must be filed at the first session at which it is practicable after defendant's arrest; and in all cases before a plea to the merits; if sustained, the defendant must not be discharged, but must be held in custody or bailed, as the case may be, to answer another indictment at the same or the next term of the court; and the time elapsing between the first and second indictments, in such case, must not be computed as a part of the period limited by law for the prosecution of the offense."

* * *

"§5407. *Punishment of rape.*—Any person who is guilty of the crime of rape must, on conviction, be punished, at the discretion of the jury, by death or imprisonment in the penitentiary for not less than ten years."

* * *

"§5567. *When Counsel appointed for defendant in capital case.*—If the defendant is indicted for a capital offense, and is unable to employ counsel, the court must appoint counsel for him, not exceeding two, who must be allowed access to him, if confined, at all reasonable hours."

* * *

"§5570. *Trial, joint or several, at the election of either defendant.*—When two or more defendants are jointly indicted, they must be tried, either jointly or separately as either may elect."

* * *

"§5579. *Change of venue; trial removed on defendant's application, etc.*—Any person charged with an indictable offense may have his trial removed to another county, on making application to the court, setting forth specifically the reasons why he cannot have a fair and impartial trial in the county in which the indictment is found; which application must be sworn to by him and must be made as early as practicable before the trial, or may be made after conviction, on new trial being granted. The refusal of such application may, after final judgment, be reviewed and revised on appeal, and the supreme court or court of appeals shall reverse and remand or render such judgment on said application, as it may deem right, without any presumption in favor of the judgment or ruling of the lower court on said application. If the defendant is in confinement, the application may be heard and determined without the personal presence of the defendant in court."

* * *

"§5580. *Trial judge may ex mero motu order change of venue.*—The trial judge may, with the consent of the defendant, ex mero motu, direct and order a change of venue as is authorized in the preceding section, whenever in his judgment there is danger of mob violence, and it is advisable to have a military guard to protect the defendant from mob violence."

* * *

"§6088. *Appeals from decision on motions for new trials.*—Whenever a motion for a new trial shall be granted or refused by the circuit court or probate court, in any civil or criminal case at law, either party in a civil case, or the defendant in a criminal case may except to the decision of the court and shall reduce to writing the substance of the evidence in the case, and also the decision of the court on the motion and the evidence taken in support of the motion and the decision of the court shall be included in the bill of exceptions which shall be a part of the record in the cause, and the appellant may assign for error that the court below improperly granted or refused to grant a new trial, and the appellate court may grant new trials, or correct any error of the circuit court and court of like jurisdiction, or probate court in granting or refusing the same. And no presumption in favor of the correctness of the judgment of the court appealed from, shall be indulged by the appellate court."

* * *

"§8630. *Objections to indictments; how taken.*—No objection to an indictment on any ground going to the formation of the grand jury which found the same can be taken to the indictment, except by plea in abatement to the indictment; and no objection can be taken to an indictment by plea in abatement except upon the ground that the grand jurors who found the indictment were not drawn by the officer designated by law to draw the same; and neither this objection, nor any other, can be taken to the formation of a special grand jury summoned by the direction of the court."

* * *

"Rule of Practice 31. *Severance in criminal cases.*—Where two or more persons, charged with a capital offense, are jointly indicted, either of them is entitled to demand a severance; but such right shall be considered as waived, unless claimed at or before the time of arraignment, or, at latest, when the court, at any term, sets a day for the trial of the case, and makes an order to summon a special venire. In other than capital offenses, a severance may be demanded at any time before the case regularly goes to the jury" (Rules of Practice of the Circuit and Inferior Courts of Common Law Jurisdiction, Alabama Code of 1928, p. 1938).

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. [redacted] 98

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, EUGENE WILLIAMS, Petitioners,

vs.

THE STATE OF ALABAMA.

No. 9[redacted] 99

HAYWOOD PATTERSON, Petitioner,

vs.

THE STATE OF ALABAMA.

No. [redacted] 100

CHARLIE WEEMS and CLARENCE NORRIS, Petitioners,

vs.

THE STATE OF ALABAMA.

BRIEF IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

THOMAS E. KNIGHT, Jr.,
Attorney General of the State of Alabama;
THOMAS SEAY LAWSON,
Assistant Attorney General
of the State of Alabama,
Counsel for Respondent.

INDEX.

SUBJECT INDEX.

Page

Brief in opposition to petition for writs of certiorari:

Opinion below 1

Questions presented 2

Statement of the case 3

Argument 4

I. The trial of this cause was fair and impartial and the sentence of the court does not constitute a deprivation of life and liberty without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States 4

II. Negroes were not systematically excluded from juries in Jackson County 7

TABLE OF CASES CITED.

Ching v. United States, 264 Fed. 639; certiorari denied, 254 U. S. 630 .... 6, 7

Godau v. State, 179 Ala. 27; 60 So. 908 6

Malloy v. State, 209 Ala. 219; 96 So. 57 6

Martin v. Texas, 200 U. S. 316 8

McLain v. State, 182 Ala. 67; 62 So. 240 6

Moore v. Dempsey, 261 U. S. 86 .... 4, 6

Moore v. Arkansas, 254 U. S. 630 .... 5, 9

Ragland v. State, 56 So. 776 8

Smith v. Mississippi, 162 U. S. 592 8

Thomas v. Texas, 212 U. S. 278 8

Virginia, Ex Parte, 100 U. S. 313 8

STATUTE CITED.

General Acts, State of Alabama, 1931, page 59 7

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

Nos. 981, 982 and 983

OZIE POWELL, WILLIE ROBERSON, ET AL.,
Petitioners,

vs.

THE STATE OF ALABAMA.

ON PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA.

BRIEF IN OPPOSITION.

Opinion Below.

This case was appealed from the Circuit Court of Jackson County, Alabama. The Supreme Court of Alabama, in an opinion March 24, 1932, affirmed the judgment of the Circuit Court of Jackson County. The opinion is found on page 145 of the record.

Questions Presented.

I.

Whether or not the defendants were accorded a fair and impartial trial and were convicted by due process of law.

II.

Whether or not the accused were provided with counsel.

III.

Whether or not negroes, the defendants being of the negro race, were systematically excluded from the juries.

In short the defendants base their contention for review by this Court upon the question of whether or not their constitutional rights under the Constitutions of the State of Alabama and of the United States were violated, asserting that they were not convicted by due process of law nor were they extended equal protection of law in that,

1. There were hostile demonstrations at the scene of the trial.
2. They should have been granted a change of venue.
3. The case should have been continued.
4. They were not provided with counsel.
5. Negroes were excluded from the juries.

Statement of the Case.

The petitioners were indicted in the Circuit Court of Jackson County, Alabama, and were charged in said indictment with the offense of rape. The victim was Victoria Price, a white woman, who lived near the City of Huntsville, Alabama, and who at the time of the commission of the offense was riding on a freight train between Stevenson and Paint Rock in Jackson County, Alabama. The trial of the petitioners was had in the Circuit Court of Jackson County on April 8, 1931, and resulted in the conviction of these petitioners, then defendants, of the offense of rape as charged in the indictment. The death penalty was imposed and on April 9, 1931, each of the defendants was sentenced to death in accordance with the verdict of the jury. These sentences were suspended pending an appeal to the Supreme Court of the State of Alabama and were by that Court affirmed on the 24th day of March, 1932.

There was no motion made by the defendants or either of them to quash the indictment in this cause, neither was there a motion made for a continuance of the cause by the defendants or either of them.

Counsel to represent them at the arraignment and at the trial of the cause were duly appointed by the trial court which counsel did, at the arraignment and during the trial of the cause, represent the defendants according to their oath and in the discharge of their duty.

Motion was made for a change of venue in the cause, which said motion appears on page 4 of the printed record in this cause.

The motion for a change of venue was by the trial court overruled, the order overruling said motion appears at page 21 of the printed record of this cause.

After the verdict of the jury and sentence of the Court a motion was made for a new trial, which said motion was twice amended. Said motion, as amended, appears on pages 53, 54 and 109 of the printed record in this cause, which said motion, as amended, after having been heard and considered by the Court was overruled, the order overruling said motion appears at page 137 of the printed record in this cause.

The petitioners seek a review by this Court of the findings and proceedings in the trial court as affirmed by the Supreme Court of the State of Alabama.

ARGUMENT.

I.

THE TRIAL OF THIS CAUSE WAS FAIR AND IMPARTIAL AND THE SENTENCE OF THE COURT DOES NOT CONSTITUTE A DEPRIVATION OF LIFE AND LIBERTY WITHOUT DUE PROCESS OF LAW IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The case of *Moore* v. *Dempsey,* 261 U. S. 86, is not an authority for a review by certiorari of the proceedings and findings of the trial court, affirmed by the Supreme Court of the State of Alabama.

In the Moore case referred to by the petitioners, the facts urged in the petition were by the pleadings admitted, when counsel for the State demurred to the petition for *habeas corpus*.

The admission of the allegations of the petitioners formed the basis of the opinion of Mr. Justice Holmes, as very positively stated by him.

When the same case was presented to this Court by a petition for writ of certiorari the writ was denied. *Frank Moore et al.* v. *State of Arkansas,* 254 U. S. 630.

In the present case none of the facts urged in the petition before this Court are admitted but on the contrary the trial court found them to be different than alleged and his findings have been affirmed by the Supreme Court of the State of Alabama.

The Moore case is only an authority for the petitioners' contention where those facts were admitted.

This Court is asked to review a ruling of a *nisi prius* court, who saw and heard the witnesses and evidence, had intimate knowledge of the conditions existing at the time of the trial and whose rulings have in all respects been affirmed by the court of last resort of the State of Alabama.

(*a*) The question as to the conditions existing at the time of the trial was presented in the defendants' motion for a change of venue and was reviewed, as a ground incorporated in the motion for new trial, by the Supreme Court of the State.

The offense committed was one calculated to arouse the curiosity of all persons in the community. It is true that there were a number of persons present when the defendants were tried and when they were arrested. It is also true that there were several newspaper articles relative to the offense. It is also true that the military were present. However, the same was not judicially determined to be necessary to protect the defendants from violence. The military was summoned because the sheriff of the county was a cautious official and desired to accord the defendants an orderly trial. The newspaper articles did not encourage mob violence nor did they intimate that there should in any sense of the word be a miscarriage of justice. Furthermore, the record does not show that the circulation of the papers had aroused the populace unduly. It is true that the defendants were not residents of Jackson County, but it is also true that the victims were not residents of Jackson County.

The witnesses on a motion for change of venue offered by the defendants each testified that there had been no hostile demonstrations towards the accused. The Supreme Court of Alabama after a careful review of the facts properly decided that the conditions existing at the time of the trial did not warrant the granting of the motion and cited in support of their decision the cases of

Godau v. *State,* 179 Ala. 27, 60 So. 908.
McLain v. *State,* 182 Ala. 67, 62 So. 240.
Malloy v. *State,* 209 Ala. 219, 96 So. 57.

The Supreme Court of Alabama in its opinion found that the facts in the case of *Moore* v. *Dempsey,* 261 U. S. 86, did not resemble in the remotest degree any of the facts and circumstances that attended the trial of these petitioners.

(*b*) The record in the case duly discloses that the defendants were at the time of the trial and at the arraignment represented by counsel.

Counsel for the petitioners criticize the manner in which counsel who represented the petitioners at the trial conducted the case. The strategy used by counsel in the opinion of subsequently employed counsel cannot be made a basis of granting the writs prayed for in this cause. For aught that appears from the record, the counsel for the defendants on trial did not desire to continue the cause for no motion was made for a continuance. Whether this was proper strategy is not for this Court to decide. *Henry Ching* v. *United States*, 264 Fed. 639; certiorari denied, 254 U. S. 630.

II.

NEGROES WERE NOT SYSTEMATICALLY EXCLUDED FROM JURIES IN JACKSON COUNTY.

The jury laws of the State of Alabama provide that all male citizens, without regard to race or color, possessing certain other qualifications, shall be included in the jury rolls of a county. General Acts, State of Alabama, 1931, page 59.

The record fails to show that negroes were not included on the jury rolls of Jackson County. The record also shows that a motion was not made at the trial of the cause to quash the venire on this or any other grounds. It is only fair to assume that the defendants were satisfied with the venire as the same was constituted and that they desired to be tried by a jury selected therefrom.

In the absence of a motion to quash and evidence in the support thereof the question is not here presented for review. *Thomas* v. *Texas,* 212 U. S. 278. *Ex parte Virginia,* 100 U. S. 313. *Martin* v. *Texas,* 200 U. S. 316. *Smith* v. *Mississippi,* 162 U. S. 592. *Ragland* v. *State,* 56 So. 776 (and Ala.).

Summarizing, the evidence in the case was amply sufficient and convincing to warrant the conviction of these defendants and the punishment imposed by the jury and Court. The defendants had a fair and impartial trial. They were represented by counsel. They were not threatened with mob violence. The trial proceeded orderly and it is fair to assume that the defendants were satisfied with the conduct of the trial and with the order preserved, as the record discloses no motions were made by the defendants' counsel to declare a mistrial or discontinuance of the case.

A motion for a new trial was made, to which the Supreme Court of Alabama held the defendants were not entitled. The matters alleged in the motion were had and done within the presence of the Court and he, having an intimate knowledge of the facts happening in his presence, properly overruled the motion for a new trial on account of the alleged applause when a verdict was rendered in one of the companion cases.

Counsel of ability known to the Supreme Court of Alabama represented the defendants in the trial.

Under the system of laws of the State of Alabama and under the Constitution of the State a defendant is accorded means of obtaining a fair and impartial trial according to the Constitution of the United States.

In short, the petitioners in this cause would ask this Court to substitute itself for the trial court and for the Court of last resort of the State of Alabama and grant writs of certiorari on questions of fact presented to the trial court for original decision and to the Supreme Court of Alabama for review.

While the facts in this case have been found not to resemble the facts in the Frank Moore case, *supra,* in any sense of the word or to approach the facts in that case in the remotest degree, yet counsel for the petitioners ask this Court to recede from the decision in the case of *Frank Moore* v. *State of Arkansas,* 254 U. S. 630, wherein this Court took the position that the defendant was not entitled to the writ of certiorari.

Respectfully submitted,

THOMAS E. KNIGHT, JR.,
Attorney General of the State of Alabama.
THOMAS SEAY LAWSON,
Assistant Attorney General of the State of Alabama.

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Supreme Court of the United States

OCTOBER TERM 1932.

Nos. 98, 99, 100.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT,
and OLEN MONTGOMERY,
Petitioners,
vs.
THE STATE OF ALABAMA.

HAYWOOD PATTERSON,
Petitioner,
vs.
THE STATE OF ALABAMA.

CHARLIE WEEMS and CLARENCE NORRIS,
Petitioners,
vs.
THE STATE OF ALABAMA.

BRIEF FOR RESPONDENT

THOMAS E. KNIGHT, JR.,
Attorney General of Alabama

THOS. SEAY LAWSON,
Assistant Attorney General of Ala.
on the Brief.

THE WILSON PRINTING CO.
MONTGOMERY, ALA.

SUBJECT INDEX

PAGE

Opinions below 1

Jurisdiction 2

Statement of case 2

Points relied on by petitioners 3

Due Process of law: 3

  Counsel 6

  Change of venue: 13

    Newspaper articles 14

    Crowd 17

    Militia 19

  Conduct of trial: 22

    Demonstrations 22

    Strategy of Counsel 25

    Moore v. Dempsey 26

Equal protection of laws 30

TABLE OF CASES

PAGE

Batson vs. State 26

  Bard & Fleming vs. Chilton, Warden, et al. 20-22

  Bowers vs. United States 25

  Brown vs. New Jersey 5

Carter vs. Texas 32

  Commonwealth vs. Flood 13

  Cook vs. United States 10

Page
Dempsey vs. State 24
Frank vs. Mangum 4
Franklin vs. South Carolina 31
Garland vs. Washington 5
Gibson vs. Mississippi 31
Godau vs. State of Alabama 15
Hawes vs. State 16
Hendry vs. State 24
Henry Ching vs. United States 11
Hodgson vs. Vermont 5
Holden vs. Hardy 4
Horn vs. State 25
Hurtado vs. California 5
Jackson vs. Commonwealth 10
Jones vs. Commonwealth 13
Jordan vs. Massachusetts 5
Malloy vs. State 15
Martin vs. Texas 32
McLain vs. State 16
Miller vs. Texas 5
Missouri ex rel Herwitz vs. North 5
Missouri vs. Lewis 5
Moore vs. Dempsey 26-27
Murray vs. Louisiana 31
Ong Chang Wing vs. United States 5
People vs. Ruef 25
Ragsdale vs. Mississippi 32

PAGE

Rogers vs. Peck 5
Riley vs. State 16
Rives vs. Virginia 31
Sheppard vs. State (Ga.) 10
Sheppard vs. State (Ala.) 26
State vs. Shellman 25
Stevens vs. State 25
Strander vs. State 32
Tarrence vs. Florida 26-31-33
United States vs. Gale 26
United States vs. Rosentien 13
Waters vs. State 25
Watts vs. State 33
Williams vs. Commonwealth 13
Williams vs. State 31

Supreme Court of the United States

OCTOBER TERM 1932.

Nos. 98, 99, 100.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT,
and OLEN MONTGOMERY,
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THE STATE OF ALABAMA.

CHARLIE WEEMS and CLARENCE NORRIS,
Petitioners,
vs.
THE STATE OF ALABAMA.

BRIEF FOR RESPONDENT

I

Opinions of the Court Below

The cases are before this Court pursuant to certiorari granted May 31, 1932. The opinions of the Supreme Court of Alabama are reported as follows:

Patterson vs. State, 141 So. 195, 224 Ala. 531;
Powell et al vs. State, 141 So. 201, 224 Ala. 540;
Weems et al vs. State, 141 So. 215, 224 Ala. 524.

The opinions of the Court below appear in these records on pages 167 of the Patterson record, 145 of the Powell record, 152 of the Weems record.

All the Court concurred in the opinions below with the exception of Anderson, Ch. J.

II

Jurisdiction

1. The jurisdiction of this proceeding is authorized by the Judicial Code, Section 237B as amended by an Act of February 13, 1925 (43 Stat. 937).

2. The opinions of the court below were returned on March 24, 1932 and applications for rehearing were denied on April 9, 1932.

3. Petitioners, in their motions for new trials claim that they were deprived of their constitutional rights in that (a) they were convicted without due process of law, (b) they were denied equal protection of the law.

III

Statement of the Case

The petitioners were convicted in the Circuit Court of Jackson County, Alabama of the crime of raping two young women, Victoria Price and Ruby Bates, residents of Huntsville, a city in Morgan County, Alabama. The crime is alleged to have taken place in a gondola car of a freight train while the train was traveling between the towns of Stevenson and Paint Rock. The young women, according to the testimony, boarded the train in Chattanooga, Tennessee and were en route to their home. The testimony shows that the petitioners, in order to effectuate their purpose, threw the white boys, with the exception of one, Gilly, off the train. A message was sent by wire to Paint Rock requesting that the petitioners be apprehended. At Paint Rock the petitioners were taken off the train and carried to the town of Scottsboro, the county seat of Jackson County, the county in which the crime is alleged to have been committed. All of the above took place on March 25, 1931. On March 26, 1931 the Judge of the Circuit Court of Jackson County ordered the Grand Jury of that county to reconvene on March 30, 1931 and called a special session of the Circuit Court for April 6, 1931. The Grand Jury on March 31, 1931 returned indictments against these petitioners and defendants on that date were arraigned and counsel appointed to represent them. After conviction, motions for new trials were made and overruled. On an appeal to the Supreme Court of Alabama judgments of the said Court of Jackson County were affirmed.

IV

The Points Relied on by Petitioner

A

Due Process of Law

The trials of these cases were fair and impartial. Defendants were not denied due process of law in contravention of the 14th Amendment to the Constitution of the United States.

As this Court has oftentimes stated, it is impossible to give a correct and comprehensive definition of due process of law. The phrase "due process of law" antedates the establishment of our institutions and is endeared to our race by antiquity and historical association. It embodies one of the broadest and most far reaching guaranties of personal and property rights. It was incorporated into Section 1 of the 14th Amendment for the purpose of preventing states from denying to certain citizens or classes the same rights, protections and benefits as are given to others. It is necessary for the enjoyment of life, liberty and property that this constitutional guaranty be strictly complied with; however, it is imperative that this

Court under our system of Government see that the States be not restricted in their method of administering justice insofar as they do not act arbitrarily and discriminatingly.

The operation and effect of this clause of the 14th Amendment and various statutes can best be stated by referring to those leading cases of this Court dealing with questions analagous to the one at hand.

We quote from the case of Frank vs. Mangum, 237 U. S. 309:

> "The due process of law clause of the Fourteenth Amendment does not preclude a State from adopting and enforcing a rule of procedure that an objection to absence of the prisoner from the courtroom on rendition of verdict by the jury cannot be taken on motion to set aside the verdict as a nullity after a motion for new trial had been made on other grounds, not including this one, and denied. Such a regulation of practice is not unreasonable.
>
> "The due process of law clause of the Fourteenth Amendment does not impose upon the State any particular form or mode of procedure so long as essential rights of notice and hearing or opportunity to be heard before a competent tribunal are not interfered with; and it is within the power of the State to establish a rule of practice that a defendant may waive his right to be present on rendition of verdict."

The words "due process of law" have never been definitely defined as said by Mr. Justice Brown in Holden vs. Hardy,169 U. S. 366, 389:

> "This court has never attempted to define with precision the words 'due process of law' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard."

It is important to appreciate that "due process of law" is process according to the system of law obtaining in each State, and not according to any general law of the United States.

Missouri vs. Lewis, 101 U. S. 22, 31;
Hurtado vs. California, 110 U. S. 516, 535.

We gather from the cases above cited that a defendant in a criminal case has been accorded due process of law when there is a law creating or defining the offense, a court of competent jurisdiction, accusation in due form, notice and opportunity to answer the charge, trial according to the established course of judicial proceedings, and a right to be discharged unless found guilty; however, no particular form of procedure is required where the conditions just enumerated are fulfilled and there is no violation of the guaranty of due process of law regardless of whether the appellate court may approve of the verdict of the jury and the judgment based thereon. In other words, the question of due process is determined by the law of the jurisdiction where the offense was committed and the trial was had.

Missouri vs. Lewis, 101 U. S. 22, 31;
Hutardo vs. California, 110 U. S. 516,535;
Brown vs. New Jersey, 175 U. S. 172;
Jordan vs. Massachusetts, 225 U. S. 167;
Rogers vs. Peck, 199 U. S. 425;
Garland vs. Washington, 232 U. S. 642;
Missouri ex rel Hurwitz vs. North, 271 U. S. 40;
Miller vs. Texas, 153 U. S. 535;
Ong Chang Wing vs. United States, 218 U. S. 272;
Hodgson vs. Vermont, 168 U. S. 262.

In view of the rule set out in the case above cited the records in these cases disclose the fact that these defendants were not denied due process of law in that their trials were in all ways in accordance with the constitution and statutes of the State of Alabama which provisions are in no way attacked as being unconstitutional. Their trial was conducted in compliance with the rules, practice, and procedure long prevailing in the State of Alabama. The court of last resort decided their cases in compliance with those rules of appeal and error which they apply in all cases.

The following procedure was followed in compliance with the requirements of the statutes of Alabama.

(a) An indictment was returned by a Grand Jury—Sections 4524, 4526, 4529, 4556 (88), 5202, 8616, 8617, 8630, 8632 and 8665 of the Code of Alabama, 1923.

(b) Petitioners were notified of the offense with which they were charged.—Sections 5568 and 8644, Code of Alabama, 1923.

(c) The date of trial was set by the trial judge.—Sections 5565, 8649 and 8650, Code of Alabama, 1923.

(d) Counsel were appointed to represent the petitioners.—Section 5567, Code of Alabama, 1923.

(e) Qualifications of jurors.—Section 14 of an Act approved February 20, 1931 (General Acts, 1931, page 56) same as Section 8603, Code of Alabama, 1923.

1

Counsel

Counsel for petitioners contend that they were denied due process of law in that they were not properly represented by counsel nor were counsel appointed for them as required by law. We agree with counsel for petitioners that under the laws of the State of Alabama the petitioners were entitled to counsel and that if they had been denied counsel they would have been deprived of their rights as guaranteed by Section 6 of Article 1 of the 1901 Constitution of Alabama.

The State of Alabama has done more than guarantee to the defendant the right to counsel but has by statute provided that when it appears to the Court that a defendant charged with a capital offense has not employed counsel that the Court shall appoint attorneys for his defense.

Section 5567, Code of Alabama, 1923, is as follows:

> 5567. When counsel appointed for defendant in capital case.—If the defendant is indicted for a capital offense, and is unable to employ counsel, the court must appoint counsel for him, not exceeding two, who must be allowed access to him, if confined, at all reasonable hours.

A compliance with this section is shown on pages 87-101 of the Powell record, pages 118-133 of the Patterson record, and pages 85-99 of the Weems record. The petitioners were arraigned on March 31, 1931 at which time a Mr. Stephen R. Roddy, an attorney from Chattanooga, Tennessee, appeared and stated to the Court that he was there at the instance of friends of the then defendants but had not as yet received definite employment in the case. In view of this fact the Court desiring to give to the defendants all the protection which the Court could possible give them, appointed members of the Scottsboro bar. It must be borne in mind that at the time of the arraignment there were nine defendants and while the record does not disclose the number of attorneys practising at the Scottsboro bar, we venture to say that there were not as many as eighteen attorneys at that bar, the number which the Court could have appointed under the statute.

If there had been only one defendant, it does not seem plausible to us that he could correctly contend that he had been denied due process of law because the Court appointed more than two lawyers to represent him. This was at most, a mere irregularity which would not invalidate a conviction.

It appears to us from the colloquy between the Court, Mr. Roddy and Mr. Moody (pages 87-101, Powell record; pages 118-133, Patterson record; pages 85-99, Weems record) that Mr. Roddy was in fact retained by friends of the then defendants and that those members of the Scottsboro bar who had investigated and prepared the case assisted Mr. Roddy when under the law they could not have been compelled to do so.

The following is a part of the colloquy which took place between the Court, Mr. Roddy and Mr. Moody of the Scottsboro bar:

> Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it as your Honor knows. I was here several days ago and appear again this morning but not in the capacity of paid counsel.
>
> * * * * * *
>
> Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.
> The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in. I would—to know if you appear for them.
>
> Mr. Roddy: I would like to appear voluntarily with local counsel of the bar. Your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel your Honor appoints.
>
> The Court: You don't appear if I appoint counsel?
> The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.
>
> Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I do not appear then as counsel but I do want to stay in and not be ruled out in this case.
The Court: Of course, I would not do that. . . . .

Mr. Moody: *Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.*

Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. *Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.*

Mr. Procter: Now, your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case and I recognize the principle involved, and the fact that. I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk duty, and I know my duty is whatever the Court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the Court, I was not trying to shirk any duty whatever, and I want the Court to un-

> derstand my attitude in the matter; I am ready to obey any order of the Court."

We wish to call to the attention of the Court the fact that Mr. Roddy, in an affidavit which appears on page 117 of the Powell record, avers that he represented the defendants throughout the trial. That part of the affidavit which is pertinent is hereafter set out.

> "Personally appeared before me, a Notary Public in and for the State and County, aforesaid, Stephen R. Roddy, of Chattanooga, Tennessee, who being first duly sworn, deposed as follows: That he appeared as one of the attorneys for nine negro boys who were tried and convicted in the Circuit Court at Scottsboro, Alabama. . . ."

Petitioners, as authority for their contention that they were deprived of counsel in contravention of the 14th Amendment, cite the cases of:

Cook vs. United States, 267 U. S. 517, 537;
Shepherd vs. State, 165 Ga. 460;
Jackson vs. Commonwealth, 215 Ky. 800.

These cases are not in any way authority for their contention, although they do state correct principles of law: (1) That a prisoner should not be denied the right of counsel, (2) Nor should counsel appointed to represent a defendant be denied a reasonable time to prepare his case.

Headnote 4 of the Cook case, supra, is as follows:

> "Where the alleged contumacy was committed by sending a letter to the judge in chambers, and eleven days thereafter an order reciting the facts and adjudging contempt was entered and an attachment thereupon issued under which the accused was arrested forthwith and brought before the court, and, upon admitting authorship of the letter, was pronounced guilty because of it and of extraneous facts referred to by the judge as in aggravation, *and was forthwith punished,*

> *without being allowed to secure and consult counsel, prepare his defense and call witnesses,* or to make a full personal explanation—Held that the procedure was unfair and oppressive and not due process of law."

The Shepherd case, supra, Headnote 1 lays down the principle that:

> "Except under extraordinary circumstances in which counsel appointed to defend one on trial for his life are already thoroughly familiar with the facts and circumstances of the case, it may be stated as a general rule, essential to the preservation of the constitutional guaranty of benefit of counsel, that counsel appointed to defend one accused of a capital offense upon their request for a postponement in order to prepare a defense, are entitled to at *least as much as one entire day* for the preparation of the defense of the accused, even though the request for postponement be not based upon the absence of witnesses, and even though there be in fact no witness absent."

The petitioners in this case were not denied the right of counsel as was the fact in the Cook case, supra, nor were they put to trial on the same day on which counsel were appointed to defend them as was the fact in the Shepherd case, supra. On the other hand, the petitioners were represented by counsel from Chattanooga and by two members of the bar of Scottsboro. They were not put to trial until one week after counsel were appointed. The record affirmatively shows that counsel had conferred with them and had done everything that they knew how to do. (Statement by Mr. Moody hereinbefore set out)

This Court in the case of Henry Ching vs. United States, 254 U. S. 630 refused to review the Circuit Court of Appeals of the Ninth Circuit which Court rendered an opinion which we respectfully insist is in support of our contention that the petitioners were not deprived of their right to counsel. The opinion of the said Circuit Court of Appeals is reported in 264 Fed. 639, a part of which is set out below:

> "It is contended that the court erred by compelling defendant over his objection to proceed to trial and in appointing an attorney to defend them. It appears that Ching, through Warren Williams, his counsel, had pleaded guilty, but at a later date the court declined to accept the plea of guilty which had theretofore been interposed, and ordered that a plea of not guilty as to both counts be interposed in behalf of defendant. On October 2, 1919, the case was called for trial; defendant and his counsel, W. J. Little, being present in open Court, Mr. Little asked permission to withdraw from the case. The court denied the request, and thereupon appointed Mr. Little to act as attorney for the defendant, and thereupon, both parties having announced themselves as ready, the trial was proceeded with.
>
> "When the case was called, counsel for the government stated that he did not see the defendant in court whereupon Mr. Williams, who had formerly appeared for the defendant, stated to the court that he had notified the defendant, who had notified him that Mr. Little had been employed by him to defend. Thereupon Mr. Little stated to the court that defendant had told him that he did not wish him to try the case. Mr. Williams then said that he had called the attention of the defendant to the matter and that defendant had assured him he would be ready with counsel to proceed with the trial. At this point the defendant appeared in person and was ordered into the custody of the marshall. Thereupon the case was called, whereupon Mr. Little expressed his wish to withdraw, stating that he did not represent the defendant, and that defendant said he did not wish him to represent him. Thereupon the court asked defendant what he would like to do with the case. Defendant replied that he would like to have it postponed for ten days. The court declined

> to continue the case and appointed Mr. Little to defend Ching. No objection was made and the trial proceeded.
>
> "We do not see that the action of the court was prejudical to the rights of the defendant. He was notified that his case had been set for trial; he had ample time to employ such counsel as he wished, and when Mr. Little was appointed to defend him no objection was made."

There was no demand or motion made for a continuance. However, such a motion would have been addressed to the discretion of the Court and under the facts of this case a denial thereof would not have been an abuse of the discretion vested in the Circuit Court.

Jones vs. Commonwealth, 38 S. W. (2) 251;
Commonwealth vs. Flood, 153 Atl. 152;
United States vs. Rosenstein et al, 34 Fed (2) 630;
Williams vs. Commonwealth, 19 S. W. (2) 964.

It thus appears that the trial court complied with every provision of law and extended every effort to afford to these petitioners the rights to which every citizen of the State is entitled and which the courts of this state have so zealously guarded regardless of color or creed. The defendants were represented by capable counsel, one of whom has enjoyed a long and successful practise before the courts of Jackson County.

Counsel, by their own statements, show that they not only had time for preparation of their case but that they knew and proceeded along proper lines for a week prior to the trial.

2

Change of Venue

Petitioners further contend that the refusal of the trial court to grant their petition or motion for a change of venue was a denial of "due process of law."

The right to a change of venue is statutory and is provided for in certain instances by Section 5579, 5580 and 5581.

The petition for change of venue is set out on pages 4 and 5 of all the records. The petition alleged that they could not have a fair and impartial trial in Jackson County because: (a) That newspaper articles had inflamed the minds of the public, (b) that a large crowd was present at the time the case was set for trial.

(a)

Newspaper Articles

The newspaper clippings which the petitioners alleged inflamed the public against them are set out on pages 5, 10, 14, 16 and 17 of all the records.

These articles relate the story of the alleged crime as the newspapers understood it and they also lament the fact that such an atrocious crime should have been perpetrated, but not once in any of them is there a single attempt to incite the people of Jackson County to mob violence nor do they contain anything which might be construed as attempting to prejudice the mind of any man who might be called to serve as juror on those cases. One of the articles expressly shows that the paper published in Scottsboro did not wish to prejudice anyone against the petitioners. In fact, it shows that the paper had tempered down the story.

There was not one scintilla of evidence introduced on the part of the petitioners to show that the newspaper articles clippings or editorials had so prejudiced the minds of the people of Jackson County that the appellants could not get a fair trial by an impartial jury of that county. It was not even shown that the Chattanooga News or Montgomery Advertiser had any circulation in Jackson County. The mere fact that certain newspaper stories were published about this matter does not, of itself, entitle a defendant to a change of venue. It must be shown that the people of that county have been prejudiced thereby.

In the case of Malloy vs. State, 96 So. 57, the Supreme Court of Alabama held: "On change of venue motion, where there was no evidence indicating that a newspaper article would or did have any influence on public opinion in the county of trial, there was no error in refusing a copy of the paper in evidence."

The weight given newspaper articles as grounds for change of venue in the State of Alabama can best be shown by setting out a part of the opinion of the Supreme Court of Alabama in the case of Godau vs. State, 179 Ala. 27, 60 So. 908, 910:

> "The newspapers of Mobile,—and they were widely read and circulated there—teemed with sensational accounts of the murder, and in all these accounts the guilt of the defendant was assumed as a fact. Pictures of the defendant and of her daughter and of the dead policeman, as well as of the sheriff and probably of some of his assistants, also appeared in the Mobile papers, and, to be short, the newspapers of Mobile did all that newspapers can do to create the impression that the defendant was certainly guilty of the murder. In addition to this, they undertook to go into the past of the defendant. She appears to have been three times married, and it was broadly hinted in the papers that the defendant had murdered two, and probably all three of her husbands, and we presume they were read by everybody as one of the worst criminals. Whether the defendant deserved all that was said of her by the papers we do not know; but, as we read the articles as they appear in this record, the facts are as we state them.
>
> "So long as we have newspapers we may expect to have through them the report of crimes, and it is not to be unexpected that, when a homicide is committed

> and discovered under circumstances like the present, even if the defendant's account of the entire matter is the truth, the newspapers of the community, answering the public interest, will furnish the defendant with at least some material upon which to base an application similar to the one under discussion. In the instant case the newspapers laid bare the real character of the deceased, and, if animosity was aroused against the defendant it was due to no appeal which was made to popular passion on account of the character of the man who was killed, but because of the character of the crime, the uncanny disposition of the body of the deceased, and the frightful hints as to the defendant's history."

In addition to the newspaper clippings the defendant, Godau, offered affidavits of 57 citizens of Mobile to the effect that the newspaper articles had so influenced the people of Mobile County against the defendant that she could not get an impartial trial therein.

The above case was cited by us to show that the Supreme Court of Alabama was merely following a long line of cases in holding that the petitioners did not make out a case entitling them to a change of venue because of certain newspaper articles. The defendant Godau was a white woman, and the newspaper articles connected with her case were much more vicious and more damaging than those of the present case and there was testimony to the effect that certain persons had been influenced thereby. So how can the petitioners be heard to say that the courts did not accord them the same process of law that had theretofore been afforded other persons charged with crime in this State, because they are of the colored race.

McClain vs. State, 62 So. 242;
Hawes vs. State, 7 So. 302;
Riley vs. State, 96 So. 599.

(b)

Crowd

It cannot be asserted as a correct principle of law that when a large crowd gathers at a court of justice that that fact alone entitles a defendant to a change of venue. There must be some hostility shown towards the defendant rather than the curiosity of a number of country men.

In the instant case there is not one particle of evidence to the effect that these petitioners were ever in danger of violence at the hands of any of the people of Jackson County, Alabama. If the citizens of that county had been as blood-thirsty, as lawless, as completely barren of all sense of right and justice as the petitioners in their brief would have this court believe, they would have mobbed the petitioners while they were still in Paint Rock, before they were brought to the county jail in Scottsboro. Where is there any evidence of threats against these petitioners. It may be true that a number of people assembled around the county jail when the petitioners were first incarcerated but this is easily understood when one realizes the circumstances of the people of that small town in the hills of north Alabama, and the manner in which they live. Scottsboro is typical of many of the small towns of the South. Very few, if any, industries are located there and the people earn their livelihood chiefly by agricultural pursuits. Each day is like the one that preceded it and the one that is to follow will be likewise. There is very little to keep many of them occupied. Very seldom anything occurs to change "the even tenor of their way," or as some might express it, "to break the monotony of an uneventful life." Anything out of the ordinary that tends to create excitement is grasped and "great crowds gather" to discuss the events or to see the persons or things which have been the means of creating or arousing interest. In a town of the size of Scottsboro the words "a great crowd" can not be taken in their ordinary sense, as a handful of people mainly the loafers of the town, constitute "a great crowd" in the eyes of the people of the villege.

In the absence of some overt act or acts, some manifestation of violence, some evidence of threats on the part of the "crowd" it cannot be correctly asserted that the presence of "the crowd" entitled the petitioners to a change of venue.

The petitioners, in support of their petition, called the Sheriff of Jackson County, Mr. Wann, and Major Starnes, the commanding officer of the National Guard Units sent to Scottsboro. If there were any two men connected with these cases who had an opportunity to know the feeling of the people of the county, they were those two men.

On direct examination Sheriff Wann testified:

> "I did not see any guns or anything like that and I did not hear any threats. I had this National Guard ~~unit to~~ accompany the prisoners to court when they were brought here several days ago. As Sheriff of this county I deemed it necessary for protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guards."

On cross examination he said:

> *"It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment I heard on the outside. I have not heard anything as intimated from the newspapers in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county, that the sentiment is not any higher here than in any adjoining counties. I do not find any more sentiment in this county than naturally arises on the charge. I*

> *think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants would have a fair and impartial trial in this case in Jackson County.* That is my judgment. *I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial."*—Page 18 of each of the records.

Major Starnes on cross-examination testified:

> "I first came here, of course, under orders from the Governor and I have been here under his orders ever since. This is the third trip I have made here from Gadsden. In my trips over to Scottsboro in Jackson County and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants. I have seen a good deal of curiosity but no hostile demonstration. In my judgment, the crowd here was here out of curiosity and not as a hostile demonstration toward these defendants."

Thus it appears from the petitioners own witnesses that the "crowds" had gathered because of curiosity and not animosity.

(c)

Militia

The reason for the presence of the military forces is plainly set out in the testimony of Sheriff Wann, when called as a witness on the motion for a change of venue. (Records, pages 18 and 19) They were called out merely as a precaution and not to dispel any organized mob or because of the fact that threats and demonstrations had been made against these petitioners. The crime with which they were charged was a serious one, and the manner in which it was alleged to have taken place was unusual and the sheriff in calling out the militia was as anxious for his own protection as for the protection of the petitioners. He is charged with the duty of protecting all of those placed under his charge. He was conscious of the fact that he was also responsible for the protection of the good name of the State of Alabama, and that such crimes as the one with which these petitioners were charged naturally tended to raise the indignation of the public, no matter to what race the perpetrators might belong.

It does not seem reasonable that it could be held that because a sheriff of a county took precautionary measures for the protection of himself and of those charged with crime that that fact alone would deny due process of law to those charged with the commission of the crime. Nothing had been done by the people of Jackson County whereby the sheriff was compelled to call out or ask for assistance. And the guards were not necessary to disperse "crowd."

The Circuit Court of Appeals, Sixth Circuit, in the case of Bard & Fleming vs. Chilton, Warden et al, 20 Fed (2) 906, a case very similar to the instant case, held:

> "The petitioners were indicted in the Circuit Court of Hopkins County, Ky. for rape, convicted and sentenced to death. Their convictions were affirmed by the Court of Appeals of Kentucky. They applied to the United States District Court for release by habeas corpus, upon the claim that the state court trial had been in violation of their constitutional right to due process of law. Some of the questions now raised pertain to the preservation and exercise and right to a change of venue, for which the Kentucky Code *conditionally* provides. These questions were decided by the court of last resort in the state and they are not open now. They involve no constitutional question, ex-

cept as they touch the claim chiefly relied on, which is that the court and jury did not and could not give a free and impartial trial but acted under the coercion of the mob and the mob spirit in the community. The District Judge gave a patient hearing and listened to many witnesses. There was some testimony tending to show that the local situation and public excitement were such as to embarass or even prevent the giving of the constitutional fair trial; but the preponderance of evidence is to the contrary. The District Judge accepted such contrary view; and not only would we give respect to his determination, but we are compelled to reach the same conclusion.

"We are satisfied that there is no sufficient basis for sustaining petitioners' contention, *unless we must say as a matter of law that, where there is such public excitement that the state authorities think it prudent to call out the military force of the state to protect a respondent against unlawful violence and where the trial is held under the immediate protection of this military authority, and where some incipient disorder is by that force sternly suppressed, the trial, for that reason alone, is not due process of law. This we cannot say.*"

Headnote 3 of the case just above quoted is as follows:

"Trial under protection of state military force is not, as matter of law, prejudicial to defendants as to constitute denial of due process."

"Public excitement, such that state authorities think it prudent to call out the military force of the state to protect defendants against unlawful violence and the holding of trial under the immediate protection of military authority, are not as a matter of law, so prejudicial as to amount to a denial of due process, in violation of the Fourteenth Amendment of the Federal Constitution."

This Court denied petition for writs of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit, 48 Sup. Ct. 122, 275 U. S. 565.

Therefore, in the absence of a showing that the militia was actually needed to dispel mob violence, their presence in Scottsboro cannot be taken even as evidence of the fact that the trial was not fair and impartial.

3

Conduct of Trial

a

Demonstrations

There was no ruling of the court invoked as to the conduct of the trials other than on the motion for a new trial.

Section 9518, Code of Alabama, 1928 (Michie) states the grounds for new trial.

Weems and Norris were tried first, then Patterson, then Powell, Roberson, Wright and Montgomery.

The motion for a new trial in the Weems and Norris case contains these allegations.—(Record, pages 65, 66)

> A new trial should be granted because of the state of excitement in Scottsboro, and when the jury reported in the case of these defendants, there was a public demonstration by the clapping of hands and hollowing in the court room in the courthouse when these defendants were tried as a result of the verdict of the jury in passing the death sentence. Because there was a demonstration in the court room and out on the streets outside of the court room when the jury reported its verdict against these defendants.

The motion for a new trial in the case of Powell et al contains the following averments: (Record, page 54)

> Because the defendants allege that before this trial came (the jury) before whom they were tried were around and about the court yards at the time the jury reported the death sentences in the case of Clarence Norris and Charlie Weems, that at the same time of said report of said jury there occurred a tremendous demonstration in the Courtroom loud enough to be heard a block away; that immediately the same demonstration by clapping of the hands and yells occurred on the outside of the court room and in the courthouse yard where jurors who tried the defendants could hear and did hear it. That such conduct was liable to have influenced the jury in this case.

The motion in the Patterson case contained these averments:

> While the trial was on, the jury in his case was asked by the court to withdraw to an adjoining room, and the jury in another case, to-wit: State of Alabama, vs. Weems and Norris, entered the court room and announced they found the said defendants, Weems and Norris, guilty and recommended the penalty of death to the sound of great applause, stamping of feet and jubilant shouting from the spectators which crowded the court room and from those who filled the environs of the courthouse, all of which the jury hearing the evidence in the trial of this defendant could not but have heard, to the irreparable hurt of this defendant, then on trial for his life.

In support of these allegations the petitioners in addition to their own affidavits called a number of the jurors several of whom testified that they heard a slight commotion but that it did not influence their verdict in any way and none of the jurors heard any commotion while they were serving as jurors. It does not appear that the defendants at any time made any objection or reserved any exception or asked for a continuance or mistrial nor does it appear that the court failed promptly to suppress any misconduct that came to its notice.

The Supreme Court of Alabama has held that matters of this kind must be brought to the attention of the court during the trial in order that the court might prevent any further disturbance and also that he might interrogate the jury as to any effect the commotion might have had on them and to charge them they pay no attention to it. The highest court of the State of Alabama has held that a matter of this kind comes too late on a motion for a new trial.

> When it did not appear that any action of the trial court was invoked because of the applause of spectators before entering upon the trial, and where defendant did not move for a continuance on that ground, or ask any other ruling presenting anything more than the matter of the court's discretion, the denial of his motion for a new trial was not an abuse of discretion.

Dempsey vs. State, 72 So. 773;
Hendry vs. State, 112 So. 212.

In the Hendry case, supra, the Supreme Court of Alabama said:

> Misconduct of bystanders, an audience attending the trial, by way of applause while the trial is in progress, is highly reprehensible and should be promptly and vigorously suppressed in such manner that the jury is made to see the ugliness and injustice of such demonstration. When thus promptly and effectively handled by the court in best position to see and determine the proper measures to be taken, the verdict of the jury will not usually be disturbed because of such misconduct. Like other issues on appeal in this state, it must be made to appear that some action or nonaction of the court in the premises probably injuriously affected substantial rights of the defendant. The

record recites in general terms that the applause was promptly suppressed. It does not appear that vigorous counsel for defendant asked further action of the court. It will be presumed the court dealt with the matter effectively and properly. We find no error in refusing a new trial because of this occurrence.

State vs. Shellmon, 192 S. W. 435;
Bowers vs. United States, 244 Fed. 641;
Waters vs. State, 123 S. E. 806, 158 Ga. 510;
People vs. Ruef, 114 Pac. 54, 14 Cal. App. 576;
Horn vs. State, 73 Pac. 705, 12 Wyo. 80;
Stevens vs. State, 93 Ga. 307, 20 S. E. 331.

The only evidence submitted on the hearing for the motion for a new trial that the demonstration was of long duration and exceedingly loud was the affidavits of the petitioners. If these are sufficient to set aside a verdict of guilt it will be exceedingly difficult to ever get a verdict to stand. The court was cognizant of the facts surrounding the trial. He is presumed to do his duty. The petitioners state that there was a large crowd present, surely if the facts were as the petitioners represent them to be that there were some good and honest people who would have so testified.

-b-

Strategy of Counsel

Petitioners aver that the failure of the counsel representing them to argue the cases to the jury was caused by the fear of the crowd. This is nothing more than a conclusion of counsel. Counsel in the trial court were not afraid to reserve exceptions and to interpose motions. The strategy of counsel cannot be reviewed by the appellate courts. We do not know why counsel preferred not to argue the cases to the jury but that was a question entirely left to their judgment.

The courts of the State of Alabama have held that after the State had made its opening argument and counsel for the defense prefer not to argue that the trial court is correct in permitting the State to make a closing argument.

> "It was within the discretion of the trial court to permit an attorney, assisting the solicitor, in a prosecution for homicide, to close the argument, notwithstanding defendant's attorney had declined to make an argument."

Sheppard vs. State, 55 So. 514, 172 Ala. 363.

Objections to qualifications of jurors subject to challenge for cause, not raised in the trial court will not be considered on appeal.

Batson vs. State, 113 So. 300;
United States vs. Gale, 109 U. S. 65;
Tarrance vs. Fla., 188 U. S. 519.

4

Moore vs. Dempsey

The case of Moore vs. Dempsey, 261 U. S. 89, strenuously relied upon by petitioners is not here applicable.

Petitioners (Brief, pages 36-47) point out what they claim to be the similarities of the two cases, but in so treating the instant case they resort to conclusions of counsel in many instances.

Before going into the facts surrounding the trial of the Moore case, supra, it should be here noted that the case came to this court on an appeal from an order of the district court dismissing a petition for habeas corpus upon demurrer, the demurrers admitting the allegations of the petition. The Court said: "We shall not say more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a Judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void. We have confined the statement to facts admitted by the demurrer. We will not say that they cannot be met, but it appears to us unavoidable that the district judge should find whether the facts alleged are true, and whether they can be explained so far as to leave the state proceedings undisturbed."

In the instant case the allegations are in no way admitted but the records of the proceedings affirmatively show that the statements made by petitioners are mere conclusions and cannot be supported by the facts in the cases.

In the Moore case, supra, *it was admitted*:

> (a) That the white people of the county had practically been at war with the petitioners. That a white man of that county had been killed. That the colored people of the county were in open rebellion against the whites.
>
> (b) That the entire trouble was a conflict between the two races.
>
> (c) That counsel for the colored people was nearly mobbed and compelled to leave the county.
>
> (d) That the action of the colored people was termed an "insurrection" and a "Committee of Seven" appointed by the Governor to investigate.
>
> (e) That shortly after the arrest of the therein petitioners a mob marched to the jail for the purpose of lynching them, but were prevented by United States troops and that a promise on the part of the "Committee of Seven" was the only thing that prevented their being mobbed."
>
> (f) That the "Committee of Seven" caused certain colored witnesses to be whipped in order to make them testify against the petitioners.
>
> (g) That on the grand jury which returned the indictment was a member of this "Committee of Seven"

and also several members of a posse organized to fight the blacks.

(h) That petitioners were put to trial on the same day counsel was appointed to defend them. That counsel had not conferred with petitioners.

(i) That blacks were systematically excluded from the jury.

(j) That the adverse crowd threatened anyone interfering with the desired result and that counsel did not venture to demand delay or ask for a change of venue.

(k) No witnesses were called for the defense nor were the defendants put upon the stand.

(l) Trial lasted only forty-five minutes.

(m) That there never was a chance for petitioners to be acquitted.

(n) That no juryman could have voted for an acquittal and continued to live in Phillips County.

(o) That if any prisoner had been acquitted he could not have escaped the mob.

In the case now before this Court none of the conclusions of the petitioners are admitted. The facts, as disclosed by the record, are:

(a) That the petitioners were not residents of Jackson County and that the people of that County had no personal animosity towards them.

(b) That the victims of the rape were not residents of Jackson County.

(c) That counsel representing petitioners were in no way interfered with in the performance of their duties.

(d) That no mob was ever organized to lynch the petitioners and that no threats of violence were made against them.

(e) That witnesses were not intimidated.

(f) That petitioners had benefit of counsel at least one week before trial.

(g) That the people of Jackson County did not try to intimidate the jurors.

(h) That witnesses were called for the defense and petitioners testified in their own behalf.

(i) That the record does not disclose any subsequent hostility toward the jurors who sat on the case in which a mistrial was had.

It is readily ascertained after a careful comparison of the facts of this case with the admitted facts of the Moore case, supra, that they are not in accord. The Moore case does not change the rule of law laid down in the case of Frank vs. Mangum, 237 U. S. 309, but this Court merely held that the facts admitted by the demurrer came within the principle of law set out in the Frank case.

> Where a trial is in fact dominated by a mob, so that the jury is intimidated and the trial judge yields, and so that there is an actual interference with the court of justice, there is, in that court, a departure from due process of law in the proper sense of that term.

We respectfully insist that in this case the averments of the petitioners are mere conclusions and are not in any manner supported by the evidence. It seems apparent to us that counsel which were retained by "friends" of the petitioners after the actual trial of this case, and who were not present at the trial and therefore had no personal knowledge of the conduct of the trial framed their motions for new trials in every way possible to come within the case of Moore vs. Dempsey, supra. The averments are very similar but it was impossible for them to so change the facts. Those attorneys who represented the petitioners during the trial and who were familiar with the entire proceedings did not so frame their motion for a new trial. It will be noted that where the facts alleged in the Moore case were not admitted, Frank Moore vs. Ark., 254 U. S. 630, this Court refused to reverse the judgment of the state court.

B

Equal Protection of the Laws

The Petitioners were not denied equal protection of the laws because of the fact that there were no members of their own race on the jury which convicted them.

The means of preparation of jury rolls, of appointing the members of the jury and the qualifications of jurors are fixed by an act of the Legislature of Alabama, 1931, approved February 20th, 1931 (General Acts, 1931, p. 56).

Section 14 of the above cited act is identical with Section 8603, Code of Alabama, 1923, and is as follows:

> "The Jury Board shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or over sixty-five years of age or who is an habitual drunkard, or who being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a free holder or householder his name may be placed on the jury roll and in the jury box."

Under the rulings of this Court in numerous cases the constitutionality of the section above quoted cannot be doubted. This Court has repeatedly held that a state statute not discriminating against a certain race or class because of their race, color or previous condition of servitude or other arbitrary disqualification but merely fixing the qualifications of jurors is not unconstitutional.

In the case of Franklin vs. South Carolina, 218 U. S. 161, 54 Lawyers' Edition 980, this Court held that a state law fixing the qualifications of jurors, which qualifications were practically the same as the Alabama statute now under consideration, was not unconstitutional.

> "We do not think there is anything in this provision of the statute having the effect to deny rights secured by the Federal Constitution. It gives to the jury commissioners the right to select electors of good moral character, such as they may deem qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions. There is nothing in this statute which discriminates against individuals on account of race or color or previous condition, or which subjects such persons to any other or different treatment than other electors who may be qualified to serve as jurors. The statute simply provides for an exercise of judgment in attempting to secure competent jurors of proper qualifications."

Murray vs. Louisiana, 163 U. S. 101, 108;
Gibson vs. Mississippi, 162 U. S. 565;
Tarrance vs. State, 188 U. S. 519;
Williams vs. State of Mississippi, 170 U. S. 213;
Rives vs. Virginia, 100 U. S. 313.

This Court has held that when negroes are excluded solely because of their race or color, a negro defendant is denied equal protection of the laws in violation of Constitution U. S. Amendment 14, whether such exclusion is done through the action of the legislature, through the courts, or through the executive or administrative officers of the state.

Carter vs. Texas, 177 U. S. 442, 44 Lawyers' Edition 839;
Strander vs. West Virginia, 100 U. S. 303.

However, the mere fact that negroes are not on a jury does not entitle the defendant to have the venire quashed or a motion for a new trial granted. There must be proof in support of timely and proper motions or pleas that the jury commissioners purposely omitted the negroes from the venire solely because of their race or color and not because of their lack of the statutory qualifications.

In the case of Martin vs. Texas, 200 U. S. 316, it was held:

> "While an accused person of African descent on trial in a State court is entitled under the constitution of the United States to demand that in organizing the grand jury, and empanelling the petit jury, there shall be no exclusion of his race on account of race and color, such discrimination cannot be established by merely proving that no one of his race was on either of the juries;and motions to quash, based on alleged discriminations of that nature, must be supported by evidence introduced or by an actual offer of proof in regard thereto."

In the case of Ragland vs. State, 65 So. 776 it was held:

> "The defendant moved to quash the venire, on the ground that the defendant was a negro and the jurors were all white persons, and hence that there was an unlawful and unconstitutional discrimination against him on account of his race or color. No evidence or showing was offered in support of the motion, and neither the trial court nor this court will presume that the officers of the law violated either the state or the federal Constitution or statutes in the selecting or drawing of persons, as jurors, to constitute the venire in this case. There was no error in overruling the motions to quash the grand and petit juries."

It has also been held that even when there is a motion to quash filed there must be evidence of the fact that the administrative officers charged with the duty of selecting the venire excluded negroes therefrom on account of their race or color and that the affidavits of those under indictment to that effect are not alone sufficient.

> "An actual discrimination by the officers charged with the administration of statutes unobjectionable in themselves against the race of a negro on trial for a crime by purposely excluding negroes from the grand and petit juries of the county, will not be presumed but must be proved. An affidavit of the persons under indictment, annexed to a motion to quash the indictment on the ground of such discrimination, stating that the facts set up in the motion are true 'to their best knowledge, information and belief', is not evidence of the facts stated."
>
> Tarrance vs. Florida, 188 U. S. 519.

The petitioners did not file a motion to quash and the only thing that could be in any way taken as attacking the jury was the averment of the petitioners in support of their motion for a new trial that "negroes possessing necessary qualifications were systematically excluded from the jury."

In the case of United States vs. Gale, 109 U. S. 65, in dealing with a matter of this kind in the Federal Courts it was held: "An objection to the qualification of grand jurors, or to the mode of summoning or empanelling them, must be made by a motion to quash, or by a plea in abatement, before pleading in bar."

We quote from the case of Watts vs. State, 171 S. W. 202, 204.

> "It is further contended the motion in arrest of judgment should have been sustained because the defendant is a negro, and the jury commission who drew the grand jury that indicted appellant, and the jury that

> tried him discriminated against him in this: The said jury commission did not draw a negro on the petit jury, and therefore, he was discriminated against, in violation to the fourteenth and fifteenth amendments to the Federal Constitution of the United States of America. And further, that defendant was in jail when the indictment was returned, and not given a chance to object to the grand jury that found the indictment. These matters come too late after the conviction. If appellant had desired to take advantage of discrimination against him because he was a negro, it should have been taken in advance of the conviction."

CONCLUSION

The laws of the State of Alabama afforded to these petitioners due process of law. The rules of procedure and practice applied to their cases are the same as are applied to all persons charged with crimes of the same nature in the State of Alabama and same are not unreasonable. The petitioners were not denied equal protection of the laws.

The judgments of the Alabama Supreme Court should be affirmed.

Dated September 24, 1932.

Respectfully submitted,

THOMAS E. KNIGHT, JR.,
Attorney General for the State of Alabama.

THOS. SEAY LAWSON,
Assistant Attorney General for the State of Alabama.

APPENDIX

Alabama Code of 1928

4524. INDICTABLE OFFENSES.—All felonies and all misdemeanors, originally prosecuted in the circuit court, are indictable offenses.

4526. CAPTION AND CONCLUSION.—An indictment must contain, in the caption or body thereof, the name of the state, county, court, and term in and at which it is preferred, and must conclude "against the peace and dignity of the State of Alabama."

4529. STATEMENT OF OFFENSE.—The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force of arms" or "contrary to the form of the statute" necessary.

4556 (88). RAPE.—A. B. forcibly ravished C. D., a woman, etc.

5202. OBJECTIONS TO INDICTMENT FOR DEFECT IN GRAND JURY: WHEN NOT AVAILABLE: EXCEPTIONS.—No objection can be taken to an indictment, by plea in abatement or otherwise, on the ground that any member of the grand jury was not legally qualified, or that the grand jurors were not legally drawn or summoned, or on any other ground going to the formation of the grand jury, except that the jurors were not drawn in the presence of the officers designated by law; and neither this objection nor any other can be taken to the formation of a special grand jury summoned by the direction of the court.

5203. WHEN SUCH PLEA FILED: IS SUSTAINED. NEW INDICTMENT PREFERRED; LIMITATION OF PROSECUTION.—A plea to an indictment, on the ground that the grand jurors by whom it was found were not drawn in the presence of the officers designated by law, must if accused has been arrested be filed at the session at which the indictment is found, and if accused has not been arrested, it must be filed at the first session at which it is practicable after defendant's arrest; and in all cases before a plea to the merits; if sustained, the defendant must not be discharged, but must be held in custody or bailed, as the case may be, to answer another indictment at the same or the next term of the court; and the time elapsing between the first and second indictments, in such case, must not be computed as a part of the period limited by law for the prosecution of the offense.

5407. PUNISHMENT OF RAPE.—Any person who is guilty of the crime of rape must, on conviction, be punished. at the discretion of the jury, by death or imprisonment in the penitentiary for not less than ten years.

5565. CASES SET FOR PARTICULAR DAYS; EXCEPTIONS.—It is the duty of the clerk of the circuit court to set for trial all criminal cases in his court, except capital cases, and cases of parties in custody, for particular days; and no case so set shall be called for trial before such day.

5567. WHEN COUNSEL APPOINTED FOR DEFENDANT IN CAPITAL CASE.—If the defendant is indicted for a capital offense, and is unable to employ counsel, the court must appoint counsel for him, not exceeding two, who must be allowed access to him, if confined, at all reasonable hours.

5570. TRIAL, JOINT OR SEVERAL, AT THE ELECTION OF EITHER DEFENDANT.—When two or more defendants are jointly indicted, they may be tried, either jointly or separately, as either may elect.

5579. CHANGE OF VENUE; TRIAL REMOVED ON DEFENDANT'S APPLICATION ETC.—Any person charged with an indictable offense may have his trial removed to another county, on making application to the court, setting forth specifically the reasons why he cannot have a fair and impartial trial in the county in which the indictment is found; which application must be sworn to by him, and must be made as early as practicable before the trial, or may be made after conviction, on new trial being granted. The refusal of such application may, after final judgment, be reviewed and revised on appeal, and the supreme court or court of appeals shall reverse and remand or render such judgment on said application, as it may deem right, without any presumption in favor of the judgment or ruling of the lower court on said application. If the defendant is in confinement, the application may be heard and determined without the personal presence of the defendant in court.

5580. TRIAL JUDGE MAY EX MERO MOTU ORDER CHANGE OF VENUE.—The trial judge may, with the consent of the defendant, ex mero motu, direct and order a change of venue as is authorized in the preceding section, whenever in his judgment there is danger of mob violence, and it is advisable to have a military guard to protect the defendant from mob violence.

6088. APPEALS FROM DECISIONS ON MOTIONS FOR NEW TRIALS.—Whenever a motion for a new trial shall be granted or refused by the circuit court or probate court, in any civil or criminal case at law, either party in a civil case, or the defendant in a criminal case may except to the decision of the court and shall reduce to writing the substance of the evidence in the case, and also the decision of the court on the motion and the evidence taken in support of the motion and the decision of the court shall be included in the bill of exceptions which shall be a part of the record in the cause, and the appellant may assign for error that the court below improperly granted or refused to grant a new trial, and the appellate court may grant new trials, or correct any error of the circuit court and court of like jurisdiction, or probate court in granting or refusing the same. And no presumption in favor of the cor-

rectness of the judgment of the court appealed from, shall be indulged by the appellate court.

8603. QUALIFICATIONS OF PERSONS PLACED ON JURY ROLL AND IN JURY BOX.—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men, and are esteemed in the community for their integrity, good character and sound judgment, but no person must be selected who is under twenty-one or over sixty-five years of age, or, who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror, or who cannot read English, or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder, his name may be placed on the jury roll and in the jury box.

8616. DRAWING GRAND AND PETIT JURIES FROM JURY BOX.—At any session of a court requiring jurors for the next session, the judge, or where there are more than one, then any one of the judges of the court shall draw from the jury box in open court the names of not less than fifty persons to supply the grand jury for such session and petit juries for the first week of such session of the court, or if a grand jury is not needed for the session at least thirty persons, and as many more persons as may be needed for jury service in courts having more than one division for the first week, and after each name is drawn it shall not be returned to the jury box, and there shall be no selection of names, and must seal up the names thus drawn, and retain possession thereof, without disclosing who are drawn until twenty days before the first day of the session of the court for which the jurors are to serve, when he shall forward these names by mail, or express, or hand the same to the clerk of the court who shall thereupon open the package, make a list of the names drawn, show-

ing the day on which the jurors shall appear and in what court they shall serve, and entering opposite every name the occupation of the person, his place of business, and of residence, and issue a venire containing said names and information to the sheriff who shall forthwith summon the persons named thereon to appear and serve as jurors.

8617. FAILURE TO DRAW JURIES BEFORE ADJOURNMENT OF COURT; SHALL DRAW THEM TWENTY DAYS BEFORE BEGINNING OF NEXT SESSION.—If for any reason the judge fails before the adjournment of the court, to draw the juries for the next session of the court, whether it be an adjourned session, special session, extra session, or a regular session, he shall, at least twenty days before the beginning of any of these sessions, draw the jurors which he should have drawn before the adjournment of the last session.

8630. OBJECTIONS TO INDICTMENTS; HOW TAKEN.—No objection to an indictment on any ground going to the formation of the grand jury which found the same can be taken to the indictment, except by plea in abatement to the indictment; and no objection can be taken to an indictment by plea in abatement except upon the ground that the grand jurors who found the indictment were not drawn by the officer designated by law to draw the same; and neither this objection, nor any other, can be taken to the formation of a special grand jury summoned by the direction of the court.

8632. SPECIAL AND EXTRA TERMS OR SESSIONS; JURIES FOR.—Juries, grand and petit, for any special, adjourned, or extra term or session of any court requiring grand or petit juries, which have not been drawn by the judge of the court, may be drawn by the judge in term time, or vacation, or the judge of the court may draw as many persons to serve as grand and petit jurors as he thinks necessary, and have them summoned as in cases where jurors are drawn to try capital cases.

8649. TWO OR MORE CAPITAL CASES SET FOR SAME DAY; JURIES FOR.—Whenever the judge of any court trying capital felonies shall deem it proper to set two or more capital cases for trial on the same day, said judge may draw and have summoned one jury or one venire facias of petit jurors for the trial of all such cases so set for trial on the same day.

8665. GRAND JURIES; HOW AND WHEN EMPANELED.—There shall be empaneled in every county having less than fifty thousand population, not less than two grand juries in every year, and when they have completed their labors, in its discretion the court may permit them to take a recess subject to the call of the judge of the circuit court, or chief justice of the supreme court, and may be reassembled at any place where the circuit court of the county is to be held. In all counties having over fifty thousand population, there shall be empaneled not less than four grand juries in every year.

SUPREME COURT OF THE UNITED STATES.

Nos. 98, 99 and 100.—October Term, 1932.

Ozie Powell, Willie Roberson, Andy Wright, and Olen Montgomery, Petitioners, 98 *vs.* State of Alabama. Haywood Patterson, Petitioner, 99 *vs.* State of Alabama. Charley Weems and Clarence Norris, Petitioners, 100 *vs.* State of Alabama.	On Writs of Certiorari to the Supreme Court of the State of Alabama.

[November 7, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

These cases were argued together and submitted for decision as one case.

The petitioners, hereinafter referred to as defendants, are negroes charged with the crime of rape, committed upon the persons of two white girls. The crime is said to have been committed on March 25, 1931. The indictment was returned in a state court of first instance on March 31, and the record recites that on the same day the defendants were arraigned and entered pleas of not guilty. There is a further recital to the effect that upon the arraignment they were represented by counsel. But no counsel had been employed, and aside from a statement made by the trial judge several days later during a colloquy immediately preceding the trial, the record does not disclose when, or under what circumstances, an appointment of counsel was made, or who was appointed. During the colloquy referred to, the trial judge, in response to a question, said that he had appointed all the members of the bar for the purpose of arraigning the defendants and then of course anticipated that the members of the bar would continue to help the defendants if no counsel appeared. Upon the argument here both sides accepted that as a correct statement of the facts concerning the matter.

There was a severance upon the request of the state, and the defendants were tried in three several groups, as indicated above. As each of the three cases was called for trial, each defendant was arraigned, and, having the indictment read to him, entered a plea of not guilty. Whether the original arraignment and pleas were regarded as ineffective is not shown. Each of the three trials was completed within a single day. Under the Alabama statute the punishment for rape is to be fixed by the jury, and in its discretion may be from ten years imprisonment to death. The juries found defendants guilty and imposed the death penalty upon all. The trial court overruled motions for new trials and sentenced the defendants in accordance with the verdicts. The judgments were affirmed by the state supreme court. Chief Justice Anderson thought the defendants had not been accorded a fair trial and strongly dissented. 224 Ala. 524; id. 531; id. 540.

In this court the judgments are assailed upon the grounds that the defendants, and each of them, were denied due process of law and the equal protection of the laws, in contravention of the Fourteenth Amendment, specifically as follows: (1) they were not given a fair, impartial and deliberate trial; (2) they were denied the right of counsel, with the accustomed incidents of consultation and opportunity of preparation for trial; and (3) they were tried before juries from which qualified members of their own race were systematically excluded. These questions were properly raised and saved in the courts below.

The only one of the assignments which we shall consider is the second, in respect of the denial of counsel; and it becomes unnecessary to discuss the facts of the case or the circumstances surrounding the prosecution except in so far as they reflect light upon that question.

The record shows that on the day when the offense is said to have been committed, these defendants, together with a number of other negroes, were upon a freight train on its way through Alabama. On the same train were seven white boys and the two white girls. A fight took place between the negroes and the white boys, in the course of which the white boys, with the exception of one named Gilley, were thrown off the train. A message was sent ahead, reporting the fight and asking that every negro be gotten off the train. The participants in the fight, and the two girls, were in an open gondola car. The two girls testified that each of them was assaulted by six different negroes in turn, and they identified the seven defendants as having been among the number. None of the white boys was called to testify, with the exception of Gilley, who was called in rebuttal.

Before the train reached Scottsboro, Alabama, a sheriff's posse seized the defendants and two other negroes. Both girls and the negroes then were taken to Scottsboro, the county seat. Word of their coming and of the alleged assault had preceded them, and they were met at Scottsboro by a large crowd. It does not sufficiently appear that the defendants were seriously threatened with, or that they were actually in danger of, mob violence; but it does appear that the attitude of the community was one of great hostility. The sheriff thought it necessary to call for the militia to assist in safeguarding the prisoners. Chief Justice Anderson pointed out in his opinion that every step taken from the arrest and arraignment to the sentence was accompanied by the military. Soldiers took the defendants to Gadsden for safekeeping, brought them back to Scottsboro for arraignment, returned them to Gadsden for safekeeping while awaiting trial, escorted them to Scottsboro for trial a few days later, and guarded the court house and grounds at every stage of the proceedings. It is perfectly apparent that the proceedings, from beginning to end, took place in an atmosphere of tense, hostile and excited public sentiment. During the entire time, the defendants were closely confined or were under military guard. The record does not disclose their ages, except that one of them was nineteen; but the record clearly indicates that most, if not all, of them were youthful, and they are constantly referred to as "the boys". They were ignorant and illiterate. All of them were residents of other states, where alone members of their families or friends resided.

However guilty defendants, upon due inquiry might prove to have been, they were, until convicted, presumed to be innocent. It was the duty of the court having their cases in charge to see that they were denied no necessary incident of a fair trial. With any error of the state court involving alleged contravention of the state statutes or constitution we, of course, have nothing to do. The sole inquiry which we are permitted to make is whether the federal Constitution was contravened (*Rogers* v. *Peck,* 199 U. S. 425, 434; *Hebert* v. *Louisiana,* 272 U. S. 312, 316); and as to that, we confine ourselves, as already suggested, to the inquiry whether the defendants were in substance denied the right of counsel, and if so, whether such denial infringes the due process clause of the Fourteenth Amendment.

First. The record shows that immediately upon the return of the indictment defendants were arraigned and pleaded not guilty. Apparently they were not asked whether they had, or were able to employ, counsel, or wished to have counsel appointed; or whether they had friends or relatives who might assist in that regard if communicated with. That it would not have been an idle ceremony to have given the defendants reasonable opportunity to communicate with their families and endeavor to obtain counsel is demonstrated by the fact that very soon after conviction, able counsel appeared in their behalf. This was pointed out by Chief Justice Anderson in the course of his dissenting opinion. "They were non residents", he said, "and had little time or opportunity to get in touch with their families and friends who were scattered throughout two other states, and time has demonstrated that they could or would have been represented by able counsel had a better opportunity been given by a reasonable delay in the trial of the cases judging from the number and activity of counsel that appeared immediately or shortly after their conviction." 224 Ala., at pp. 554-555.

It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard. This will be amply demonstrated by a brief review of the record.

April 6, six days after indictment, the trials began. When the first case was called, the court inquired whether the parties were ready for trial. The state's attorney replied that he was ready to proceed. No one answered for the defendants or appeared to represent or defend them. Mr. Roddy, a Tennessee lawyer not a member of the local bar, addressed the court, saying that he had not been employed, but that people who were interested had spoken to him about the case. He was asked by the court whether he intended to appear for the defendants, and answered that he would like to appear along with counsel that the court might appoint. The record then proceeds:

"The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

"Mr. Roddy: Your Honor has appointed counsel, is that correct?

"The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

"Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

"The Court: Of course I would not do that—

"Mr. Roddy: I just appear here through the courtesy of Your Honor.

"The Court: Of course I give you that right; . . ."

And then, apparently addressing all the lawyers present, the court inquired:

" . . . well are you all willing to assist?

"Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

"The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga—

"Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

"The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint—

"Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

"The Court: That is what I was trying to ascertain, Mr. Parks."

"Mr. Parks: Of course if they have counsel, I don't see the necessity of the Court appointing anybody; if they haven't counsel, of course I think it is up to the Court to appoint counsel to represent them.

"The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

"Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed, it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of the people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it I would be glad to turn it over—a counsel but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation for it and not being familiar with the procedure in Alabama, . . ."

Mr. Roddy later observed:

"If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent.

"The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

"Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

"The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if—

"Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

"The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if—

"Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

"The Court: All right."

And in this casual fashion the matter of counsel in a capital case was disposed of.

It thus will be seen that until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants. Prior to that time, the trial judge had "appointed all the members of the bar" for the limited "purpose of arraigning the defendants." Whether they would represent the defendants thereafter if no counsel appeared in their behalf, was a matter of speculation only, or, as the judge indicated, of mere anticipation on the part of the court. Such a designation, even if made for all purposes, would, in our opinion, have fallen far short of meeting, in any proper sense, a requirement for the appointment of counsel. How many lawyers were members of the bar does not appear; but, in the very nature of things, whether many or few, they would not, thus collectively named, have been given that clear appreciation of responsibility or impressed with that individual sense of duty which should and naturally would accompany the appointment of a selected member of the bar, specifically named and assigned.

That this action of the trial judge in respect of appointment of counsel was little more than an expansive gesture, imposing no substantial or definite obligation upon any one, is borne out by the fact that prior to the calling of the case for trial on April 6, a leading member of the local bar accepted employment on the side of the prosecution and actively participated in the trial. It is true that he said that before doing so he had understood Mr. Roddy would be employed as counsel for the defendants. This the lawyer in question, of his own accord, frankly stated to the court; and no doubt he acted with the utmost good faith. Probably other members of the bar had a like understanding. In any event, the circumstance lends emphasis to the conclusion that during perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thoroughgoing investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself. *People ex rel Burgess* v. *Risley,* 66 How. Pr. (N. Y.) 67; *Batchelor* v. *State,* 189 Ind. 69, 76.

Nor do we think the situation was helped by what occurred on the morning of the trial. At that time, as appears from the colloquy printed above, Mr. Roddy stated to the court that he did not appear as counsel, but that he would like to appear along with counsel that the court might appoint; that he had not been given an opportunity to prepare the case; that he was not familiar with the procedure in Alabama, but merely came down as a friend of the people who were interested; that he thought the boys would be better off if he should step entirely out of the case. Mr. Moody, a member of the local bar, expressed a willingness to help Mr.

Roddy in anything he could do under the circumstances. To this the court responded, "All right, all the lawyers that will; of course I would not require a lawyer to appear if—." And Mr. Moody continued, "I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do." With this dubious understanding, the trials immediately proceeded. The defendants, young, ignorant, illiterate, surrounded by hostile sentiment, haled back and forth under guard of soldiers, charged with an atrocious crime regarded with especial horror in the community where they were to be tried, were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them.

It is not enough to assume that counsel thus precipitated into the case thought there was no defense, and exercised their best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thorough-going investigation might disclose as to the facts. No attempt was made to investigate. No opportunity to do so was given. Defendants were immediately hurried to trial. Chief Justice Anderson, after disclaiming any intention to criticize harshly counsel who attempted to represent defendants at the trials, said: " . . . the record indicates that the appearance was rather pro forma than zealous and active . . ." Under the circumstances disclosed, we hold that defendants were not accorded the right of counsel in any substantial sense. To decide otherwise, would simply be to ignore actualities. This conclusion finds ample support in the reasoning of an overwhelming array of state decisions, among which we cite the following: *Sheppard* v. *State,* 165 Ga. 460, 464; *Reliford* v. v. *State,* 140 Ga. 777; *McArver* v. *State,* 114 Ga. 514; *Sanchez* v. *State,* 199 Ind. 235, 246; *Batchelor* v. *State,* 189 Ind. 69, 76; *Mitchell* v. *Commonwealth,* 225 Ky. 83; *Jackson* v. *Commonwealth,* 215 Ky. 800; *State* v. *Collins,* 104 La. 629; *State* v. *Pool,* 50 La. Ann. 449; *People ex rel. Burgess* v. *Risley,* 66 How. Pr. (N. Y.) 67; *State ex rel. Tucker* v. *Davis,* 9 Okla. Cr. 94; *Commonwealth* v. *O'Keefe,* 298 Pa. 169; *Shaffer* v. *Territory,* 14 Ariz. 329, 333.

It is true that great and inexcusable delay in the enforcement of our criminal law is one of the grave evils of our time. Continuances are frequently granted for unnecessarily long periods of time, and delays incident to the disposition of motions for new trial and hearings upon appeal have come in many cases to be a distinct reproach to the administration of justice. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob.

As the court said in *Commonwealth* v. *O'Keefe*, 298 Pa. 169, 173:

> "It is vain to give the accused a day in court, with no opportunity to prepare for it, or to guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or law of the case."
>
> . . .
>
> "A prompt and vigorous administration of the criminal law is commendable and we have no desire to clog the wheels of justice. What we here decide is that to force a defendant, charged with a serious misdemeanor, to trial within five hours of his arrest, is not due process of law regardless of the merits of the case."

Compare *Reliford* v. *State*, 140 Ga. 777, 778.

Second. The Constitution of Alabama provides that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel; and a state statute requires the court in a capital case, where the defendant is unable to employ counsel, to appoint counsel for him. The state supreme court held that these provisions had not been infringed, and with that holding we are powerless to interfere. The question, however, which it is our duty, and within our power, to decide, is whether the denial of the assistance of counsel contravenes the due process clause of the Fourteenth Amendment to the federal Constitution.

If recognition of the right of a defendant charged with a felony to have the aid of counsel depended upon the existence of a similar right at common law as it existed in England when our Constitution was adopted, there would be great difficulty in maintaining it as necessary to due process. Originally, in England, a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest. At the same time parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel. After the revolution of 1688, the rule was abolished as to treason, but was otherwise steadily adhered to until

1836, when by act of Parliament the full right was granted in respect of felonies generally. 1 Cooley's Constitutional Limitations, (8th Ed.), 698, et seq., and notes.

An affirmation of the right to the aid of counsel in petty offenses, and its denial in the case of crimes of the gravest character, where such aid is most needed, is so outrageous and so obviously a perversion of all sense of proportion that the rule was constantly, vigorously and sometimes passionately assailed by English statesmen and lawyers. As early as 1758, Blackstone, although recognizing that the rule was settled at common law, denounced it as not in keeping with the rest of the humane treatment of prisoners by the English law. "For upon what face of reason", he says, "can that assistance be denied to save the life of a man, which yet is allowed him in prosecutions for every petty trespass?" 4 Blackstone 355. One of the grounds upon which Lord Coke defended the rule was that in felonies the court itself was counsel for the prisoner. 1 Cooley's Constitutional Limitations, *supra.* But how can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional.

The rule was rejected by the colonies. Before the adoption of the federal Constitution, the Constitution of Maryland had declared "That, in all criminal prosecutions, every man hath a right . . . to be allowed counsel; . . ." (Art. XIX, Constitution of 1776). The Constitution of Massachusetts, adopted in 1780 (Part the First, Art. XII), the Constitution of New Hampshire, adopted in 1784 (Part I, Art. XV), the Constitution of New York of 1777 (Art. XXXIV), and the Constitution of Pennsylvania of 1776 (Art. IX) had also declared to the same effect. And in the case of Pennsylvania, as early as 1701, the Penn Charter (Art. V) declared that "all Criminals shall have the same Privileges of Witnesses and Council as their Prosecutors"; and there was also a provision in the Pennsylvania statute of May 31, 1718 (Dallas, Laws of Pennsylvania, 1700-1781, Vol. 1, p. 134), that in capital cases learned counsel should be assigned to the prisoners.

In Delaware, the Constitution of 1776 (Art. 25), adopted the common law of England, but expressly excepted such parts as were repugnant to the rights and privileges contained in the Declaration of Rights; and the Declaration of Rights which was adopted on September 11, 1776, provided (Art. 14), "That in all Prosecutions for criminal Offences, every Man hath a Right . . . to be allowed Counsel, . . ." In addition, Penn's Charter, already referred to, was applicable in Delaware. The original Constitution of New Jersey of 1776 (Art. XVI) contained a provision like that of the Penn Charter, to the effect that all criminals should be admitted to the same privileges of counsel as their prosecutors. The original Constitution of North Carolina (1776) did not contain the guarantee, but c. 115, § 85, Sess. Laws, N. Car., 1777 (N. Car. Rev. Laws, 1715-1796, Vol. 1, 316) provided ". . . That every person accused of any crime or misdemeanor whatsoever, shall be entitled to council in all matters which may be necessary for his defence, as well to facts as to law; . . ." Similarly, in South Carolina the original Constitution of 1776 did not contain the provision as to counsel, but it was provided as early as 1731 (Act of August 20, 1731, § XLIII, Grimke, S. Car. Pub. Laws, 1682-1790, p. 130) that every person charged with treason, murder, felony, or other capital offense, should be admitted to make full defense by counsel learned in the law. In Virginia there was no constitutional provision on the subject, but as early as August, 1734 (c. VII, § III, Laws of Va., 8th Geo. II, Hening's Stat. at Large, Vol. 4, p. 404), there was an act declaring that in all trials for capital offenses the prisoner, upon his petition to the court, should be allowed counsel

The original Constitution of Connecticut (Art. I, § 9) contained a provision that "In all criminal prosecutions, the accused shall have the right to be heard by himself and by counsel"; but this constitution was not adopted until 1818. However, it appears that the English common law rule had been rejected in practice long prior to 1796. See Zephaniah Swift's "A System of the Laws of the State of Connecticut," printed at Windham by John Byrne, 1795-1796, Vol. II, Bk. 5, "Of Crimes and Punishments," c. XXIV, "Of Trials," pp. 398-399.*

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*This ancient work, consisting of six books, has long been out of print. A copy of it is preserved in the locked files of the Library of Congress. The following extract from the pages cited is both interesting and instructive:

"The attorney for the state then proceeds to lay before the jury, all the evidence against the prisoner, without any remarks or arguments. The prisoner by himself or counsel, is then allowed to produce witnesses to counteract and

The original Constitution of Georgia (1777) did not contain a guarantee in respect of counsel, but the Constitution of 1798 (Art. III, § 8) provided that " . . . no person shall be debarred from advocating or defending his cause before any court or tribunal, either by himself or counsel, or both." What the practice was prior to 1798 we are unable to discover. The first constitution adopted by Rhode Island was in 1842, and this constitution contained the usual guarantee in respect of the assistance of counsel in criminal prosecutions. As early as 1798 it was provided by statute, in the very language of the Sixth Amendment to the federal Constitution, that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defence; . . ." An Act Declaratory of certain Rights of the People of this State, § 6, Rev. Pub. Laws, Rhode Island and Providence Plantations, 1798. Furthermore, while the statute itself is not available, it is recorded as a matter of history that in 1668 or 1669 the colonial assembly enacted that any person who was indicted might employ an attorney to plead in his behalf. 1 Arnold, History of Rhode Island, 336.

It thus appears that in at least twelve of the thirteen colonies the rule of the English common law, in the respect now under consideration, had been definitely rejected and the right to counsel fully recognized in all criminal prosecutions, save that in one or two instances the right was limited to capital offenses or to the more serious crimes; and this court seems to have been of the opinion that this was true in all the colonies. In *Holden* v. *Hardy*, 169 U. S. 366, 386, Mr. Justice Brown, writing for the court, said:

> "The earlier practice of the common law, which denied the benefit of witnesses to a person accused of felony, had been abolished by statute, though so far as it deprived him of the assist-

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obviate the testimony against him; and to exculpate himself with the same freedom as in civil cases. We have never admitted that cruel and illiberal principle of the common law of England that when a man is on trial for his life, he shall be refused counsel, and denied those means of defence, which are allowed, when the most trifling pittance of property is in question. The flimsy pretence, that the court are to be counsel for the prisoner will only highten our indignation at the practice: for it is apparent to the least consideration, that a court can never furnish a person accused of a crime with the advice, and assistance necessary to make his defence. This doctrine might with propriety have been advanced, at the time when by the common law of England, no witnesses could be adduced on the part of the prisoner, to manifest his innocence, for he could then make no preparation for his defense. One cannot read without horror and astonishment, the abominable maxims of law, which deprived persons accused, and on trial for crimes, of the assistance

ance of counsel and compulsory process for the attendance of his witnesses, it had not been changed in England. But to the credit of her American colonies, let it be said that so oppressive a doctrine had never obtained a foothold there."

One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence, subject, however, to the qualification that they be shown not to have been unsuited to the civil and political conditions of our ancestors by having been followed in this country after it became a nation. *Lowe* v. *Kansas,* 163 U. S. 81, 85. Compare *Murray's Lessee et al.* v. *Hoboken Land and Improvement Co.,* 18 How. 272, 276-277; *Twining* v. *New Jersey,* 211 U. S. 78, 100-101. Plainly, as appears from the foregoing, this test, as thus qualified, has not been met in the present case.

We do not overlook the case of *Hurtado* v. *California,* 110 U. S. 516, where this court determined that due process of law does not require an indictment by a grand jury as a prerequisite to prosecution by a state for murder. In support of that conclusion the court (pp. 534-535) referred to the fact that the Fifth Amendment, in addition to containing the due process of law clause, provides in explicit terms that "No person shall be held to answer for

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of counsel, except as to points of law, and the advantage of witnesses to exculpate themselves from the charge. It seems by the ancient practice, that whenever a person was accused of a crime, every expedient was adopted to convict him and every privilege denied him, to prove his innocence. In England, however, as the law now stands, prisoners are allowed the full advantage of witnesses, but excepting in a few cases, the common law is enforced, in denying them counsel, except as to points of law.

"Our ancestors, when they first enacted their laws respecting crimes, influenced by the illiberal principles which they had imbibed in their native country, denied counsel to prisoners to plead for them to anything but points of law. It is manifest that there is as much necessity for counsel to investigate matters of fact, as points of law, if truth is to be discovered.

"The legislature has become so thoroughly convinced of the impropriety and injustice of shackling and restricting a prisoner with respect to his defence, that they have abolished all those odious laws, and every person when he is accused of a crime, is entitled to every possible privilege in making his defence, and manifesting his innocence, by the instrumentality of counsel, and the testimony of witnesses."

The early statutes of Connecticut, upon examination, do not seem to be as clear as this last paragraph would indicate; but Mr. Swift, writing in 1796, was in a better position to know how the statutes had been interpreted and applied in actual practice than the reader of today; and we see no reason to reject his statement.

a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, . . .", and said that since no part of this important amendment could be regarded as superfluous, the obvious inference is that in the sense of the Constitution due process of law was not intended to include, *ex vi termini,* the institution and procedure of a grand jury in any case; and that the same phrase, employed in the Fourteenth Amendment to restrain the action of the states, was to be interpreted as having been used in the same sense and with no greater extent; and that if it had been the purpose of that Amendment to perpetuate the institution of the grand jury in the states, it would have embodied, as did the Fifth Amendment, an express declaration to that effect.

The Sixth Amendment, in terms, provides that in all criminal prosecutions the accused shall enjoy the right "to have the assistance of counsel for his defense." In the face of the reasoning of the *Hurtado* case, if it stood alone, it would be difficult to justify the conclusion that the right to counsel, being thus specifically granted by the Sixth Amendment, was also within the intendment of the due process of law clause. But the *Hurtado* case does not stand alone. In the later case of *Chicago, Burlington &c. R'd* v. *Chicago,* 166 U. S. 226, 241, this court held that a judgment of a state court, even though authorized by statute, by which private property was taken for public use without just compensation, was in violation of the due process of law required by the Fourteenth Amendment, notwithstanding that the Fifth Amendment explicitly declares that private property shall not be taken for public use without just compensation. This holding was followed in *Norwood* v. *Baker,* 172 U. S. 269, 277; *Smyth* v. *Ames,* 169 U. S. 466, 524; and *San Diego Land Company* v. *National City,* 174 U. S. 739, 754.

Likewise, this court has considered that freedom of speech and of the press are rights protected by the due process clause of the Fourteenth Amendment, although in the First Amendment, Congress is prohibited in specific terms from abridging the right. *Gitlow* v. *New York,* 268 U. S. 652, 666; *Stromberg* v. *California,* 283 U. S. 359, 368; *Near* v. *Minnesota,* 283 U. S. 697, 707.

These later cases establish that notwithstanding the sweeping character of the language in the *Hurtado* case, the rule laid down is not without exceptions. The rule is an aid to construction, and in some instances may be conclusive; but it must yield to more compelling considerations whenever such considerations exist. The fact that the right involved is of such a character that it cannot be denied without violating those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions" (*Hebert* v. *Louisiana*, 272 U. S. 312, 316), is obviously one of those compelling considerations which must prevail in determining whether it is embraced within the due process clause of the Fourteenth Amendment, although it be specifically dealt with in another part of the federal Constitution. Evidently this court, in the later cases enumerated, regarded the rights there under consideration as of this fundamental character. That some such distinction must be observed is foreshadowed in *Twining* v. *New Jersey*, 211 U. S. 78, 99, where Mr. Justice Moody, speaking for the court, said that " . . . it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, because a denial of them would be a denial of due process of law. *Chicago, Burlington & Quincy Railroad* v. *Chicago*, 166 U. S. 226. If this is so, it is not because those rights are enumerated in the first eight Amendments, but because they are of such a nature that they are included in the conception of due process of law." While the question has never been categorically determined by this court, a consideration of the nature of the right and a review of the expressions of this and other courts, makes it clear that the right to the aid of counsel is of this fundamental character.

It never has been doubted by this court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law. The words of Webster, so often quoted, that by "the law of the land" is intended "a law which hears before it condemns," have been repeated in varying forms of expression in a multitude of decisions. In *Holden* v. *Hardy*, 169 U. S. 366, 389, the necessity of due notice and an opportunity of being heard is described as among the "immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard." And Mr. Justice Field, in an earlier case, *Galpin* v. *Page,* 18 Wall. 350, 368-369, said that the rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. "Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered." Citations to the same effect might be indefinitely multiplied, but there is no occasion for doing so.

What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissable. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.

The decisions all point to that conclusion. In *Cooke* v. *United States,* 267 U. S. 517, 537, it was held that where a contempt was not in open court, due process of law required charges and a reasonable opportunity to defend or explain. The court added, "We think this includes the assistance of counsel, if requested, . . ." In numerous other cases the court, in determining that due process was accorded, has frequently stressed the fact that the defendant had the aid of counsel. See, for example, ***Felts*** v. ***Murphy,*** 201 U. S. 123, 129; ***Frank*** v. ***Mangum,*** 237 U. S. 309, 344; ***Kelley*** v. ***Oregon,*** 273 U. S. 589, 591. In ***Ex parte Hidekuni Iwata,*** 219 Fed. 610, 611, the federal district judge enumerated among the elements necessary to due process of law in a deportation case the opportunity at some stage of the hearing to secure and have the advice and assistance of counsel. In ***Ex parte Chin Loy You,*** 223 Fed. 833, also a deportation case, the district judge held that under the particular circumstances of the case the prisoner, having seasonably made demand, was entitled to confer with and have the aid of counsel. Pointing to the fact that the right to counsel as secured by the Sixth Amendment relates only to criminal prosecutions, the judge said, ". . . but it is equally true that that provision was inserted in the Constitution because the assistance of counsel was recognized as essential to any fair trial of a case against a prisoner." In ***Ex parte Riggins,*** 134 Fed. 404, 418, a case involving the due process clause of the Fourteenth Amendment, the court said, by way of illustration, that if the state should deprive a person of the benefit of counsel, it would not be due process of law. Judge Cooley refers to the right of a person accused of crime to have counsel as perhaps his most important privilege, and after discussing the development of the English law upon that subject, says: "With us it is a universal principle of constitutional law, that the prisoner shall be allowed a defense by counsel." 1 Cooley's Constitutional Limitations (8th Ed.), 700. The same author, as appears from a chapter which he added to his edition of Story on the Constitution, regarded the right of the accused to the presence, advice and assistance of counsel as necessarily included in due process of law. 2 Story on the Constitution (4th Ed.), § 1949, p. 668. The state decisions which refer to the matter, invariably recognize the right to the aid of counsel as fundamental in character. E. g., ***People*** v. ***Napthaly,*** 105 Cal. 641, 644; ***Cutts*** v. ***State,*** 54 Fla. 21, 23; ***Martin*** v. ***State,*** 51 Ga. 567, 568; ***Sheppard*** v. ***State,*** 165 Ga. 460, 464; ***State*** v. ***Moore,*** 61 Kan. 732, 734; ***State*** v. ***Ferris,*** 16 La. Ann. 424; ***State*** v. ***Simpson,*** 38 La. Ann. 23, 24; ***State*** v. ***Briggs,*** 58 W. Va. 291, 292.

In the light of the facts outlined in the forepart of this opinion—the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.

But passing that, and assuming their inability, even if opportunity had been given, to employ counsel, as the trial court evidently did assume, we are of opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. To hold otherwise would be to ignore the fundamental postulate, already adverted to, "that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard." *Holden* v. *Hardy, supra.* In a case such as this, whatever may be the rule in other cases, the right to have counsel appointed, when necessary, is a logical corollary from the constitutional right to be heard by counsel. Compare *Carpenter & Sprague* v. *Dane County,* 9 Wis. 274; *County of Dane* v. *Smith,* 13 Wis. 585, 586. *Hendryx* v. *The State,* 130 Ind. 265, 268-269; *Cutts* v. *State,* 54 Fla. 21, 23; *People* v. *Goldenson,* 76 Cal. 328, 344; *Delk* v. *The State,* 99 Ga. 667, 669-670.

In *Hendryx* v. *The State, supra,* there was no statute authorizing the assignment of an attorney to defend an indigent person accused of crime, but the court held that such an assignment was necessary to accomplish the ends of public justice, and that the court possessed the inherent power to make it. "Where a prisoner," the court said (p. 269), "without legal knowledge, is confined in jail, absent from his friends, without the aid of legal advice or the means of investigating the charge against him, it is impossible to conceive of a fair trial where he is compelled to conduct his cause in court, without the aid of counsel . . . . Such a trial is not far removed from an *ex parte* proceeding."

Let us suppose the extreme case of a prisoner charged with a capital offense, who is deaf and dumb, illiterate and feeble minded, unable to employ counsel, with the whole power of the state arrayed against him, prosecuted by counsel for the state without assignment of counsel for his defense, tried, convicted and sentenced to death. Such a result, which, if carried into execution, would be little short of judicial murder, it cannot be doubted would be a gross violation of the guarantee of due process of law; and we venture to think that no appellate court, state or federal, would hesitate so to decide. See *Stephenson* v. *State*, 4 O. App. 128; *Williams* v. *State*, 163 Ark. 623, 628; *Grogan* v. *Commonwealth*, 222 Ky. 484, 485; *Mullen* v. *State*, 28 Okla. Cr. 218, 230; *Williams* v. *Commonwealth*, (Ky.), 110 S. W. 339, 340. The duty of the trial court to appoint counsel under such circumstances is clear, as it is clear under circumstances such as are disclosed by the record here; and its power to do so, even in the absence of a statute, can not be questioned. Attorneys are officers of the court, and are bound to render service when required by such an appointment. See Cooley, Constitutional Limitations, *supra*, 700 and note.

The United States by statute and every state in the Union by express provision of law, or by the determination of its courts, make it the duty of the trial judge, where the accused is unable to employ counsel, to appoint counsel for him. In most states the rule applies broadly to all criminal prosecutions, in others it is limited to the more serious crimes, and in a very limited number, to capital cases. A rule adopted with such unanimous accord reflects, if it does not establish the inherent right to have counsel appointed at least in cases like the present, and lends convincing support to the conclusion we have reached as to the fundamental nature of that right.

The judgments must be reversed and the causes remanded for further proceedings not inconsistent with this opinion.

Judgments reversed.

[illegible]

SUPREME COURT OF THE UNITED STATES.

Nos. 98, 99 and 100.—October Term, 1932.

Ozie Powell, Willie Roberson, Andy Wright, and Olen Montgomery, Petitioners,
98 *vs.*
State of Alabama.

Haywood Patterson, Petitioner,
99 *vs.*
State of Alabama.

Charley Weems and Clarence Norris, Petitioners,
100 *vs.*
State of Alabama.

On Writs of Certiorari to the Supreme Court of the State of Alabama.

[November 7, 1932.]

Mr. Justice Butler, dissenting.

The Court putting aside—they are utterly without merit—all other claims that the constitutional rights of petitioners were infringed, grounds its opinion and judgment upon a single assertion of fact. It is that petitioners "were denied the right of counsel, with the accustomed incidents of consultation and opportunity of preparation for trial." If that is true, they were denied due process of law and are entitled to have the judgments against them reversed.

But no such denial is shown by the record.

Nine defendants including Patterson were accused in one indictment, and he was also separately indicted. Instead of trying them en masse, the State gave four trials and so lessened the danger of mistake and injustice that inevitably attends an attempt in a single trial to ascertain the guilt or innocence of many accused. Weems and Norris were tried first. Patterson was tried next on the separate indictment. Then five were tried. These eight were found guilty. The other defendant, Roy Wright, was tried last and ~~acquitted~~ not convicted. The convicted defendants took the three cases to the state supreme court where the judgment as to Williams was reversed and those against the seven petitioners were affirmed.

There were three painstaking opinions, a different justice writing for the court in each case. 224 Ala. 524, 532, 540. Many of the numerous questions decided were raised at the trial and reflect upon defendants' counsel much credit for zeal and diligence on behalf of their clients. Seven justices heard the cases. The chief justice, alone dissenting, did not find any contention for the accused sufficient in itself to warrant a reversal but alluded to a number of considerations which he deemed sufficient when taken together to warrant the conclusion that the defendants did not have a fair trial. The court said (p. 553): "We think it a bit inaccurate to say Mr. Roddy appeared only as amicus curiae. [This refers to a remark in the dissenting opinion.] He expressly announced he was there from the beginning at the instance of friends of the accused; but not being paid counsel asked to appear not as employed counsel, but to aid local counsel appointed by the court, and was permitted so to appear. The defendants were represented as shown by the record and pursuant to appointment of the court by Hon. Milo Moody, an able member of the local bar of long and successful experience in the trial of criminal as well as civil cases. We do not regard the representation of the accused by counsel as pro forma. A very rigorous and rigid cross-examination was made of the state's witnesses, the alleged victims of rape, especially in the cases first tried. A reading of the records discloses why experienced counsel would not travel over all the same ground in each case."

The informality disclosed by the colloquy between court and counsel, which is quoted in the opinion of this Court and so heavily leaned on, is not entitled to any weight. It must be inferred from the record that Mr. Roddy at all times was in touch with the defendants and the people who procured him to act for them. Mr. Moody and others of the local bar also acted for defendants at the time of the first arraignment and, as appears from the part of the record that is quoted in the opinion, thereafter proceeded in the discharge of their duty including conferences with the defendants. There is not the slightest ground to suppose that Roddy or Moody were by fear or in any manner restrained from full performance of their duties. Indeed, it clearly appears that the State, by proper and adequate show of its purpose and power to preserve order, furnished adequate protection to them and the defendants.

When the first case was called for trial defendants' attorneys had already prepared and then submitted a motion for change of venue together with supporting papers. They were ready to and did at once introduce testimony of witnesses to sustain that demand. They had procured and were ready to offer evidence to show that the defendants Roy Wright and Eugene Williams were under age. The record shows that the State's evidence was ample to warrant a conviction. And three defendants each, while asserting his own innocence, testified that he saw others accused commit the crime charged. When regard is had to these and other disclosures that may have been and probably were made by petitioners to Roddy and Moody before the trial it would be difficult to think of anything that counsel erroneously did or omitted for their defense.

If there had been any lack of opportunity for preparation, trial counsel would have applied to the court for postponement. No such application was made. There was no suggestion, at the trial or in the motion for a new trial which they made, that Mr. Roddy or Mr. Moody was denied such opportunity or that they were not in fact fully prepared. The amended motion for new trial, by counsel who succeeded them, contains the first suggestion that defendants were denied counsel or opportunity to prepare for trial. But neither Mr. Roddy nor Mr. Moody has given any support to that claim. Their silence requires a finding that the claim is groundless for if it had any merit they would be bound to support it. And no one has come to suggest any lack of zeal or good faith on their part.

If correct, the ruling that the failure of the trial court to give petitioners time and opportunity to secure counsel was denial of due process is enough, and with this the opinion should end. But the Court goes on to declare that "the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment." This is an extension of federal authority into a field hitherto occupied exclusively by the several States. Nothing before the Court calls for a consideration of the point. It was not suggested below and petitioners do not ask for its decision here. The Court, without being called upon to consider it, adjudges without a hearing an important constitutional question concerning criminal procedure in state courts.

It is a wise rule firmly established by a long course of decisions here that constitutional questions—even when properly raised and argued—are to be decided only when necessary for a determination of the rights of the parties in controversy before it. Thus, in the *Charles River Bridge* case, 11 Pet. 420, the Court said (p. 553): "Many other questions, of the deepest importance, have been raised and elaborately discussed in the argument. It is not necessary, for the decision of this case, to express our opinion upon them; and the Court deem it proper to avoid volunteering an opinion on any question involving the construction of the constitution where the case itself does not bring the question directly before them, and make it their duty to decide upon it." And see *Davidson* v. *New Orleans*, 96 U. S. 97, 103, *et seq.* *Hauenstein* v. *Lynham*, 100 U. S. 483, 490. *Blair* v. *United States*, 250 U. S. 273, 279. *Adkins* v. *Children's Hospital*, 261 U. S. 525, 544.

The record wholly fails to reveal that petitioners have been deprived of any right guaranteed by the Federal Constitution, and I am of opinion that the judgment should be affirmed.

Mr. Justice McREYNOLDS concurs in this opinion.

END OF CASE